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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK
No. ____________

IN THE

Supreme Court of the United States

FREDERICK CECIL DAMRON,
Petitioner,
v.
MARY GAIL (DAMRON) FOWLER.
Respondent.

OCTOBER TERM, 2002

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

FREDERICK CECIL DAMRON *
130 South Cold Springs Road
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*Pro Se'

3.31 pp

QUESTIONS PRESENTED

I. Whether in the case below as the elected circuit judge, with jurisdiction over dissolution of marriage cases, delegated the conducting of an evidentiary hearing to a non-elected appointed Domestic Relations Commissioner (DRC) who formulated findings of fact and conclusions of law and made a recommendation to the judge which findings of fact and conclusions of law were adopted by the trial judge, without ever having heard the evidence and without reviewing a transcript of the evidence or reviewing of the record, is a clear violation of the United States and Kentucky Constitutions.

II. Whether the system of delegating to appointed and unelected DRC's, the authority to conduct evidentiary hearings in dissolution of marriage cases and making findings of fact and conclusions of law, which the elected judge ratifies and adopts without ever having heard the evidence and without reviewing a transcript of the evidence or review of the record, violates the Kentucky Constitution which provides all trial judges in Kentucky are to be elected at the popular election.

III. Whether the use of a DRC, whereby the Commissioner hears the witnesses and considers the evidence and makes findings of fact which are adopted by a judge who has never heard the witnesses or the testimony or has never reviewed a transcript of the evidence, constitutes an unlawful taking of property[1] without the payment of just compensation and without affording Petitioner proper due process of law, both under the United States and the Kentucky Constitutions.

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[1] This includes the marital home at 16230 Bowling Drive, numerous additional properties, personal property, etc, which is valued as a $200,000 award to Respondent and a **negative** $10,000 award to the Petitioner. Respondent's award represented savings over the Petitioner's lifetime, yet only married for 7 years and she had declared bankruptcy six months before the marriage in 1991.

IN THE

Supreme Court of the United States

No. ________

FREDERICK CECIL DAMRON,

Petitioner,

v.

MARY GAIL (DAMRON) FOWLER.

Respondent.

OCTOBER TERM, 2002

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

The Petitioner, Frederick Cecil Damron, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Kentucky entered after denial of discretionary review on September 18, 2002.

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The opinions below have resulted in manifest injustice. Those errors below have caused substantial harm to the Petitioner, and the Petitioner has exhausted his remedies to have this matter reviewed. This system described herein, manifestly damages any member of the general public before an appointed DRC in the Commonwealth of Kentucky in an unconstitutional system. For the foregoing reasons, Petitioner respectfully submits the Petition for Certiorari should be granted.

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OPINIONS BELOW

On September 18, 2002, the Supreme Court of Kentucky denied discretionary review of the opinion by the Kentucky Court of Appeals (Appendix A). The Kentucky Court of Appeals opinion was delivered on November 2, 2001, (Appendix D), the record before the Court was deficient. The Court of Appeals denied the petition for rehearing on January 25, 2002 (Appendix E). The Court of Appeals denied Petitioner's motion to supplement and amend the designation of the record and reconsider the opinion on February 20, 2002 (Appendix F). The Court of Appeals denied the motion to reconsider the denial to supplement and amend the designation of the record on April 9, 2002 (Appendix G). A copy of the unreviewed Report and Recommendations of the Domestic Relations Commissioner (DRC) was filed on July 11, 2000 (Appendix B). The order adopting those findings without review, and denial of a hearing on exception, by the Circuit Court, was entered on September 6, 2000 (Appendix C).

JURISDICTION

Jurisdiction of this Court is invoked under Article III §2 and Supreme Court Rule 13, §1.

PROVISIONS OF LAW INVOLVED

Amendments V[2] and XIV §1[3] of the United States Constitution; §1, cl. 5[4], §2[5], §13[6], §112, §113, §117[7] of the Kentucky Constitution; Rule 53.06(2)[8] and 75.08[9] of the Kentucky Rules of Civil Procedure; 403.190(1) [10] of the Kentucky Revised Statutes.

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[2] US Const. Amend. 5 "...nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation".

[3] US Const. Amend. 14 §1 "... nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

On September 18, 2002, the Supreme Court of Kentucky filed a decision adverse to Petitioner by denial of discretionary review of the opinion by the Kentucky Court of Appeals and the denial to allow the Petitioner to supplement and

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[4] KY Const. §1 cl. 5"...the right of acquiring and protecting property."

[5] KY Const. §2 "Absolute and arbitrary power over the lives liberty and property of freemen exists nowhere in a republic..."

[6] KY Const. §13 "... nor shall any man's property be taken... ...without just compensation..."

[7] KY Const. §117. "Justices of the Supreme Court and judges of the Court of Appeals, Circuit and District Court shall be elected from their respective districts or circuits on a nonpartisan basis as provided by law".

[8] KRCP 53.06(2) "...The court, after hearing, may adopt the [DRC] report, or may modify it, or may reject it in whole or in part, or may receive further evidence, or may recommit it with instructions..."

[9] KRCP 73.08 "... If-anything material to either party is omitted from the record on appeal by error or accident or is misstated therein... ... on a proper suggestion or of its own initiative, may direct that the omission or misstatement shall be corrected..."

[10] KRS 403.190(1). "In a proceeding for dissolution of the marriage or for legal separation, or in a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall assign each spouse's property to him. It also shall divide the marital property without regard to marital misconduct in just proportions..."

amend the designation of the record, which did not reflect the lower court proceedings.

On October 8, 1998, September 8 and 15, 1999, this divorce action was before a DRC who is appointed by an elected circuit judge. The circuit judge has jurisdiction in marriage dissolution actions. On July 11, 2000, a full 21 months after the first hearing, and 10 months after the last hearing, a Report and Recommendations was filed by the DRC without proper review of the record, evidence, transcript or a review of over 6 hours of testimony, which was the Petitioner's portion of the case. The results of these findings were the award of over $200,000 to the Respondent and negative -$10,000[11] to the Petitioner. On September 6, 2000, without a required hearing, the circuit court Judge adopted the Report and Recommendations of the DRC, without review of the evidence, record or transcript[12]. This was in direct violation of the Kentucky Constitution. The Court also failed to allow Petitioner a hearing on his objections to the report filed by the DRC. This was in direct violation KRCP 53.06(2)[13]. On November 2, 2001, the Kentucky Court of Appeals based on the improperly designated record, which presented a distorted view as it failed to designate over six (6) hours of testimony, rendered an opinion. On January 24, 2002, Petitioner filed a motion with the Kentucky Court of Appeals to supplement the record and amend the designation of the record with the missing transcripts pursuant to KRCP 73.08. Petitioner filed a motion for rehearing based on the actual record from the lower Court instead of the record before the Court of Appeals, which presented a distorted view. Both motions were denied on January 25, 2002, and February 20, 2002. Petitioner filed a motion to reconsider allowing the record to be supplemented and amend the designation, and this was denied on April 9, 2002. On September 18, 2002, the Supreme Court of Kentucky denied discretionary review of this matter.

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[11] This is a remaining debt on Jeep Grand Cherokee, valued at $27,000 before being totaled by the Respondent while drunk and on drugs. Petitioner had a $10,000 non-marital interest in the vehicle, ignored by the DRC and the Respondent sold the vehicle for $250 without the Petitioner's knowledge, even with his name on the title. These facts were affirmed by the Respondent in her testimony before the DRC but contained within the six (6) hours of testimony failed to be designated to the Kentucky Court of Appeals and the Court of Appeals denied Petitioner's motion to supplement and amend the designation of the record as it presented a distorted view, was deficient and failed to accurately reflect the lower court proceedings.

[12] Private investigation found this practice of ratifying, without review, findings of fact and conclusions of law provided in report to the Judge by a DRC to be commonplace in most counties of Kentucky after numerous interviews with attorneys. General practice of the Courts indicated Rule 53.06(2), which requires a hearing on objections, is ignored by the lower Courts.

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[13] KRCP 53.06(2) requires a hearing when objections are filed regarding the report by a DRC. This rule states "The court, **after hearing**, may adopt the report, or may modify it, or may reject it in whole or in part, or may receive further evidence, or may recommit it with instructions" (Emphasis added). Petitioner was denied ANY hearing on his objections and exceptions to the DRC report.

REASONS FOR GRANTING THE WRIT

I. THE ELECTED CIRCUIT JUDGE, WITH JURISDICTION OVER DISSOLUTION OF MARRIAGE CASES, DELEGATED THE CONDUCTING OF AN EVIDENTIARY HEARING TO A NON-ELECTED DRC WHO FORMULATED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND MADE A RECOMMENDATION TO THE JUDGE, WHERE FINDINGS OF FACT AND CONCLUSIONS OF LAW WERE ADOPTED BY THE TRIAL JUDGE WITHOUT EVER HAVING HEARD THE EVIDENCE OR REVIEW OF THE RECORD IS A CLEAR VIOLATION OF THE UNITED STATES AND KENTUCKY CONSTITUTION.

On October 8, 1998, the first hearing by a DRC was held in a divorce action between Petitioner and Respondent. On September 9 and 15, 1999, the final hearings were held. A full 21 months after the first hearing and 10 months after the final hearing, a Report and Recommendations were filed by the DRC. Petitioner filed exceptions to the report of the DRC[14]. On September 6, 1999, without review of the record, evidence or transcript, or holding any form of required hearing; the Boyd Circuit Court Judge[15] adopted the Report and Recommendations of the DRC[16]. This violated KRCP Rule 53.06(2)[17], as well as, the Kentucky and United States Constitutional requirements for due process of law and resulted in the taking of property without just compensation.

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[14] The first DRC, Thomas M. Howe, on September 2, 1998, recused due to conflict of interest. The second DRC, Anna H. Ruth, was later found to have a close relative dating the Respondent during the time of hearings and report of findings and recommendations by the same DRC.

[15] The Boyd Circuit Judge, C. David Hagerman, who adopted the DRC findings without review or affording Petitioner a required hearing on exceptions, recused on October 4, 2002, after Petitioner learned Judge Hagerman was also using the Respondent's attorney as his own in his personal divorce action at the time of Petitioner's rulings in 1999 to present day. Petitioner was not made aware of this fact at the time of his hearings & rulings in 1999 or 2000.

On October 5, 2000, the order of the Court adopting the unreviewed Report and Recommendation by the DRC, was appealed to the Kentucky Court of Appeals. The record before the Kentucky Court of Appeals was improperly designated and presented a distorted view. The Petitioner's portion of the case was missing, which included over six (6) hours of testimony. Upon rendering the opinion, Petitioner filed a motion for rehearing and to supplement the record and amend the designation of the record with the missing testimony. This was filed per KRCP 75.08, which allows an incorrect record to be amended to reflect the lower Court proceedings for appeal. Petitioner's motions were denied. Again, Petitioner was denied due process in violation of the

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Petitioner filed motions with that Court regarding the same in 2002. For the same reasons, the Respondent's (and the Judge's) attorney, W. Jeffrey Scott, has withdrawn from the case due to conflict of interest which existed during Petitioner's hearings in question, and continued to have this same conflict of interest as of October 2002, at the time of withdrawing from the case.

[16] Private investigation found this practice of ratifying, without review, findings of fact and conclusions of law provided in report to the judge by a DRC to be commonplace in most counties of Kentucky after numerous interviews with attorneys. General practice of the Courts indicated Rule 53.06(2), which requires a hearing on objections is ignored by the lower Courts.

[17] *Kelley v. Fedde*, Ky. 64 S.W.3d 812 (2002). This case stated "Appellant made a timely objection to the DRC's report and was entitled to a hearing on those objections pursuant to CR 53.06(2). As noted in *Haley v. Haley*, Ky.App., 573 S.W.2d 354 (1978), while a full-blown evidentiary hearing is not contemplated by the rule, the parties must be afforded an opportunity for oral argument.

United States and Kentucky Constitutions and the Report and Recommendations of the DRC were never reviewed.

The Kentucky Constitution provides that all judicial judges in the Commonwealth are elected and none are appointed. The circuit judges are delegating the authority of trying cases, and hearing evidence, making findings of fact, to a DRC appointed by the judge, and then the judges are just adopting those findings of fact never having heard the witnesses or having reviewed the transcript of evidence.

The current method being adopted by the circuit judges of the Commonwealth of Kentucky violate the United States and Kentucky Constitutions. The method departs from the essential requirements of law, causing material injury to the Petitioner throughout the remainder of the proceedings below and effectively leaves no adequate remedy on appeal.

II. THE SYSTEM OF DELEGATING TO APPOINTED AND UN-ELECTED DRC'S, THE AUTHORITY TO CONDUCT EVIDENTIARY HEARINGS IN DISSOLUTION OF MARRIAGE CASES AND MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW, WHICH THE ELECTED JUDGE RATIFYS AND ADOPTS WITHOUT REVIEWING A TRANSCRIPT OF THE EVIDENCE OR REVIEW OF THE RECORD, VIOLATES THE KENTUCKY CONSTITUTION WHICH PROVIDES ALL TRIAL JUDGES IN KENTUCKY ARE TO BE ELECTED AT THE POPULAR ELECTION.

Adopting findings of fact, conclusions of law from a Report and Recommendations by a DRC without holding a hearing on objections, review of the evidence, record or transcript is the same as granting the DRC the full powers of judicial authority of an elected Judge and violates the Kentucky Constitution.

First, on September 11, 2000, Petitioner's exceptions were overruled without a hearing, review of the record, evidence or transcript. This violates the most basic right of due process of law and violated KRCP 53.06(2) as handed down by the Kentucky Supreme Court in *Kelley v. Fedde*, 64 S.W.3d 812, Ky. (2002). It rendered an unlawful taking of property without affording the Petitioner due process of law.

Second, reviewing a record on appeal where the record was deficient and presented a distorted view again violated the Petitioner's due process rights. Petitioner filed a motion to supplement the record and amend the designation of the record with the missing six (6) hours of testimony. The Kentucky Court of Appeals denied this motion. This did not follow even case law. The "case must be tried on appeal in Court of Appeals on record as it was presented to the trial Court" *Fortney v. Elliott's Adm'r.*, 273 S.W.2d 51 Ky. (1954).

Therefore, the record has **NEVER** been reviewed as required and the DRC is being granted full authority as a Judge, which violates the Kentucky Constitution, as the DRC is appointed and not elected.

The Kentucky Constitution is very clear on the fact of all judges being elected by the popular elected vote. KY Const. §117 states "Justices of the Supreme Court and judges of the Court of Appeals, Circuit and District Court shall be elected from their respective districts or circuits on a nonpartisan basis as provided by law".

The Kentucky Constitution allows for trial commissioners, however, their report and recommendations are required to be reviewed upon objections pursuant to KRCP 53.06(2). The Boyd Circuit courts have a history for the report and recommendations of a DRC to fail being reviewed by the Judge and a failure to provide a meaningful hearing on objections. Note the recent Kentucky Supreme Court Case in *Kelly v. Fedde*, 64 S.W.3d 812, Ky. (2002). The DRC has become an appointed Judge, defacto, by waiver of review by the Circuit Judge. This ruling still has not solved the problem of adopting DRC reports without judicial review.

The DRC does not have full judicial powers. The Kentucky Constitution, §113, cl. 5[18], grants "the chief judge of the district shall appoint a trial commissioner... ...All trial commissioners shall have power to perform such duties of the district court as may be prescribed by the Supreme Court" and a Report and Recommendations by a DRC is not an order by the Court, merely a recommendation which requires review by a judge. It requires review and adoption by the Court after a hearing on the exceptions and review of the record. The report can be rejected in whole or in part. *Calloway v. Calloway*, 832 S.W.2d 890 Ky.App. (1992) demonstrates that "the trial judge is under no duty to accept the commissioner's finding of fact". The lower Court would be well within its discretion to "make new findings and conclusions in direct conflict with the first findings and conclusions and, in consequence thereof, enter a new judgment" *Carpenter v. Evans*, 363 S.W. 2d 108 Ky. (1962). The report cannot, however, be arbitrarily accepted without any form of review by the Circuit Judge. This is a clearly unconstitutional practice. In failing to review the record or hold a hearing on exceptions, this violates the limited jurisdiction of the DRC, and grants the full power of judicial authority to the DRC in violation of the Kentucky Constitution, as the

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[18] KY Const. §113 cl. 5. "In any county in which no district judge resides the chief judge of the district shall appoint a trial commissioner... ...Other trial commissioners... ...may be appointed by the chief judge... ...All trial commissioners shall have power to perform such duties of the district court as may be prescribed by the Supreme Court.

DRC is neither a District or Circuit Judge found in §112[19] and §113[20].

Further, the DRC is not an elected official, she is appointed to that position. To grant a DRC by appointment, the judicial authority the same as a Judge elected to his position, violates the Kentucky Constitution §117[21].

The Kentucky Constitution grants authority for judges of two positions in a county[22]. One is a District Judge and the second is a Circuit Judge. The Circuit Judge has jurisdiction over marriage dissolutions. Both require election by popular vote. The Kentucky Constitution does not grant full judicial power and authority as a judge to a DRC nor does it allow for any judge in the Commonwealth to be appointed.

The people of the Commonwealth of Kentucky have the ability to elect and unelect judges by the Kentucky Constitution but they have no ability to "unelect", or elect a DRC. The current situation is unconstitutional by the Kentucky Constitution, which affords a DRC full judicial powers by appointment yet prevents the electorate from removing a DRC from office through the election process. The clear example is the Report and Recommendations, which included findings of fact and conclusions of law adopted by the Court without a hearing, review of the evidence, record or transcript.

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[19] KY Const. §112 cl. 4. "In a judicial circuit having only one judge, he shall be the chief judge. In judicial circuits having two or more judges, they shall select biennially a chief judge..."

[20] KY Const. §113 cl. 3. "Each judicial district created by this amendment initially shall have at least one district judge..."

[21] KY Const. §117. "Justices of the Supreme Court and judges of the Court of Appeals, Circuit and District Court shall be elected from their respective districts or circuits on a nonpartisan basis as provided by law".

[22] The Courts of Kentucky have operated special "Family Courts" with Family Court Judges in a few counties for 10 years. Called a pilot program, it was found to be in violation of the Kentucky Constitution. An amendment to the constitution was ratified on November 5, 2002, to allow the addition of a third type of judge for a county, a "Family Court Judge". This still will not provide a DRC the judicial authority of a judge.

The system of delegating to appointed and unelected DRC's the full judicial authority in this instant case, and numerous other cases[23] in the Commonwealth of Kentucky, violates the Kentucky Constitution.

This system has created substantial errors of law apparent on the record adversely affecting material rights of the Petitioner and clearly demonstrates the proceedings are erroneous on the face of the record. Any member of the general public faced with this system will be denied his Constitutional rights afforded under the United States and Kentucky Constitutions.

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[23] Private investigation found this practice of ratifying, without review, findings of fact and conclusions of law provided in report to the judge by a DRC, to be commonplace in most counties of Kentucky after numerous interviews with attorneys. General practice of the Courts indicated Rule 53.06(2), which requires a hearing on objections, is ignored by the lower Courts.

III. THE USE OF A DRC WHEREBY THE COMMISSIONER HEARS THE WITNESSES AND CONSIDERS THE EVIDENCE AND MAKES FINDINGS OF FACT WHICH ARE ADOPTED BY A JUDGE WHO HAS NEVER HEARD THE WITNESSES OR THE TESTIMONY OR HAS NEVER REVIEWED A TRANSCRIPT OF THE EVIDENCE, CONSTITUTES AN UNLAWFUL TAKING OF PROPERTY WITHOUT PAYMENT OF JUST COMPENSATION AND WITHOUT AFFORDING PETITIONER PROPER DUE PROCESS OF LAW, BOTH UNDER THE UNITED STATES AND KENTUCKY CONSTITUTIONS.

In the Report and Recommendations by the DRC, the Petitioner was given negative $10,000 (debt for a vehicle the Respondent destroyed while driving under the influence of alcohol and drugs). The Respondent was awarded over $200,000, which includes numerous properties, vehicles, personal property and included 100% of the marital home and contents at 16230 Bowling Drive and **NO DEBTS**. The Petitioner received less than nothing, and the Respondent received far beyond what could even be considered a justifiable award even under KRS 403.190(1)[24], which requires "the court shall assign each spouse's property to him... ...It also shall divide the marital property without regard to marital misconduct in just proportions..." The Petitioner lost a lifetime of savings to the Respondent from the DRC award after seven (7) years of marriage even though she had declared bankruptcy six (6) months prior to the marriage in 1991.

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[24] KRS 403.190(1). "In a proceeding for dissolution of the marriage or for legal separation, or in a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall assign each spouse's property to him. It also shall divide the marital property without regard to marital misconduct in just proportions..."

The DRC failed to consider the evidence presented by the Petitioner in any fashion, and many of the facts reiterated by the DRC, were clearly erroneous.

After those violations by the DRC, the Circuit Judge ratified the Report and Recommendations by the DRC, without ever making any review of the record, evidence or transcript, much less holding a hearing on the objections to the Report by the DRC. In each step of the process, the Petitioner has been clearly denied due process of law and NEVER had an elected judge review the complete case.

The taking of property without just compensation and due process of law violates the most basic tenets of the United States and Kentucky Constitutions. Petitioner specifically refers to U.S. Const. Amend. V, and Amend. XIV §1, as well as, the rights to own property and said property not be taken without just compensation or arbitrary power being exercised over an individual, KY Const. §1, cl. 5, §2 and §13.

Further, it violates the Kentucky Revised Statutes, KRS 403.190(1).

The "failure to observe essential requirements of law" was a failure to accord due process of law within contemplation of the Constitution and commission of error so fundamental in character as to fatally infect the judgment and render it void. In essence, the Petitioner has been denied his day in Court and has yet to have his case and evidence reviewed by a judge.

The Circuit Judge has failed to follow applicable procedures and law, and adopted findings not supported by substantial evidence and unsupported conclusions of law, failing to review the same resulting in an unlawful taking of property without payment of just compensation. This is a departure from the essential elements of the law.

The use of a DRC, whereby the Commissioner hears the witnesses and considers the evidence and makes findings of fact which are adopted by a judge who has never heard the witnesses or the testimony, or has never reviewed a transcript of the evidence, constitutes an unlawful taking of property without the payment of just compensation and without affording Petitioner proper due process of law, both under the United States and Kentucky Constitutions.

CONCLUSION

The opinions below have resulted in manifest injustice. Those errors below have caused substantial harm to the Petitioner, and the Petitioner has exhausted his remedies to have this matter reviewed. This system described herein, manifestly damages any member of the general public before an appointed DRC in the Commonwealth of Kentucky from an unconstitutional system. For the foregoing reasons, Petitioner respectfully submits the Petition for Certiorari should be granted.

Respectfully submitted,

FREDERICK CECIL DAMRON *
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(606) 286-4096

**Pro Se'*

IN THE

Supreme Court of the United States

No. ________, October Term, 2002

FREDERICK CECIL DAMRON,

Petitioner,

v.

MARY GAIL (DAMRON) FOWLER.

Respondent.

PROOF OF SERVICE

Commonwealth of Kentucky,)
) ss.
County of Carter,)

Frederick Cecil Damron, being first duly sworn, deposes and says:

That on December 16, 2002, the petition for writ of certiorari and Appendix A, B, C, D, E, F and G, to the petition in the above entitled case was deposited in a United State Post Office mail box located in Olive Hill, Kentucky, with first-class postage prepaid, properly addressed to the Clerk of the Supreme Court of the United States, and within the time allowed for filing said petition for writ of certiorari;

That an additional copy of the petition and affidavit of the proof of mailing of the petition was served on the Respondent, and all parties required to be served have been served:

Ms. Mary Gail (Damron) Fowler, Pro Se'
16230 Bowling Drive
Catlettsburg, KY 41129

Hon. Marc I. Rosen - Circuit Court Judge
2800 Louisa Street
Catlettsburg, KY 41129

Clerk, Boyd Circuit Courthouse
2800 Louisa Street
Catlettsburg, KY 41129

Clerk, Kentucky Court of Appeals
360 Democrat Drive
Frankfort, KY 40601

Clerk, Supreme Court of Kentucky
700 Capitol Avenue, Rm 235 Capitol Bldg.
Frankfort, KY 40601

I declare under penalty of perjury the foregoing is true and correct. Executed at Olive Hill, Kentucky, on December 16, 2002.

FC Damron

Frederick Cecil Damron, Affiant

FREDERICK CECIL DAMRON *
130 South Cold Springs Road
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(606) 286-4096

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APPENDIX A

SUPREME COURT OF KENTUCKY

ORDER

DENYING MOTION FOR DISCRETIONARY REVIEW

SEPTEMBER, 18, 2002

For Writ of Certiorari to the United States Supreme Court

Appeal from Boyd Circuit Court
Hon. C. David Hagerman, Judge
Action No. 98-CI-00326
Court of Appeals No. 2000-CA-002406-MR
Kentucky Supreme Court No. 2002-SC-157-D

ORDER DENYING DISCRETIONARY REVIEW

SUPREME COURT OF KENTUCKY
2002-SC-157-D
(2000-CA-2406-MR)

FREDERICK CECIL DAMRON MOVANT,

BOYD CIRCUIT COURT
V 1998-CI-326

MARY DAMRON FOWLER RESPONDENT.

ORDER DENYING DISCRETIONARY REVIEW

The motion for discretionary review of the decision of the Court of Appeals is denied.

ENTERED September 18, 2002.

/s/ J.E. Lambert
Chief Justice

APPENDIX B

BOYD CIRCUIT COURT

DIVISION II

REPORT AND RECOMMENDATIONS OF DOMESTIC RELATIONS COMMISSIONER

JULY, 11, 2000

ANNOTATED

For Writ of Certiorari to the United States Supreme Court

Appeal from Boyd Circuit Court
Hon. C. David Hagerman, Judge
Action No. 98-CI-00326
Court of Appeals No. 2000-CA-002406-MR
Kentucky Supreme Court No. 2002-SC-157-D

ANNOTATED FINDINGS OF FACT, REPORT AND RECOMMENDATIONS BY DRC

LEGEND:	Regular Type: Taken from Report
	Italics Type: Annotations

COMMONWEALTH OF KENTUCKY
BOYD CIRCUIT COURT
DIVISION II
CIVIL ACTION NO. 98-CI-00326

MARY DAMRON FOWLER PETITIONER,

vs. REPORT AND RECOMMENDATION OF DOMESTIC RELATIONS COMMISSIONER

FREDERICK CECIL DAMRON RESPONDENT.

This matter came before the Domestic Relations Commissioner on September 8, 1999, and September 15, 1999, for a hearing on the division of marital property and debts **[FN1]**.

[FN1] *DRC Commissioner Anna H. Ruth failed to inform the Court of her conflict of interest as the Petitioner, Mary Damron Fowler, was romantically involved with the Commissioner's relative, Jackie Ruth, during the divorce proceedings, which is supported by testimony. See endnotes at the end of this section for supporting testimony and exhibits*

Present were the Petitioner and her attorney, Hon. W. Jeffrey Scott **[FN2]**,

[FN2] *Counsel for Petitioner, Hon. W. Jeffrey Scott was representing the presiding Judge, C. David Hagerman, in his* *own divorce action and failed to notify Fred Damron he had such a conflict of interest. Copies of case history, decree, motions, cancelled checks and testimony are included in the endnotes. See endnotes at the end of this section for supporting testimony and exhibits*

and the Respondent and his attorney, Hon. Rodney S. Justice.

Commissioner Thomas Howe initially heard a portion of the testimony on October 8, 1998, including testimony of Mayson Haynesworth of Roanoke, Virginia, **[FN3]**

[FN3] *The inclusion of Haynesworth's testimony was an error by the Lower Court, as it had nothing to do with the property division and was objected to by Damron. Haynesworth had lost a significant case to Fred Damron and would be expected to say nothing positive. Haynesworth was used as a mudslinger in a hearing about property which had nothing to do with misconduct. Haynesworth lost his case, using the same arguments, to a tribunal. Allowing this testimony and making any form of basis from testimony regarding credibility, is clear error. Damron testified about Haynesworth's testimony being inaccurate in the hearings which were not provided to the Court for review. See endnotes at the end of this section for supporting testimony and exhibits.*

as well as the testimony of the Petitioner **[FN4]**.

[FN4] *There were glaring differences in the testimony of Mary Fowler in the hearing before Commissioner Howe, her deposition and the hearing testimony given before Commissioner Ruth. NONE of this hearing testimony was part of the reviewable record until Damron had the testimony transcribed, as it was significant evidence which failed to become part of the designated record. See endnotes at the end of this section for supporting testimony and exhibits. See footnote [FN61] Conflicting Testimony, Credibility for examples of the differences in testimony by Mary Fowler.*

However, Commissioner Howe subsequently determined that he may have a conflict and the case was referred to this Commissioner **[FN5]**.

[FN5] *The fact Commissioner Howe had a conflict of interest in the case further supports Damron's position the testimony of Haynesworth should not have been allowed and was an error by the court, as "bad acts" are precluded, the hearing was about property "without regard to misconduct" and testimony which - was provided in regard to Haynesworth's testimony was inaccurate. See endnotes at the end of this section for supporting testimony and exhibits*

The Petitioner testified anew.

A transcript of the testimony of Mr. Haynesworth was ordered on September 16, 1999. The transcript was not filed until June 20, 2000 **[FN6]**.

[FN6] *Haynesworth's testimony was the only testimony transcribed and made part of the reviewable record. The fact this testimony was part of the reviewable record and the remaining testimony failed to become reviewable presents a distorted view. A clear finding or appeal could not be made without the complete record designated. See endnotes at the end of this section for supporting testimony and exhibits.*

After hearing testimony, reading the transcript **[FN7]**;

[FN7] *Ten (10) months had passed since the DRC had heard the last testimony. Twenty-one (21) months had passed since the first DRC hearing. It is practically impossible to believe the DRC, with such a caseload, could accurately recall the testimony from so long ago. No transcript existed of any testimony which was before DRC Ruth. The only transcript which existed was of Mayson Haynesworth and Depositions of Fowler and Damron in 1998. The DRC did take notes during her hearings, and review of the DRC's notes, found significant portions of her notes were inaccurate and did not* *reflect the testimony provided to the Court. See the endnotes at the end of this section for supporting testimony and exhibits. See Annotated DRC notes for the significant examples of glaring errors found in the DRC notes.*

reviewing the record, and being sufficiently advised, the Commissioner FINDS:

1. A Decree of Dissolution was entered May 22, 1998. However, the provisions effecting the property rights of the parties contained in said Decree were set aside by the Courts Order entered June 5, 1998.

2. The marital residence on Bowling Drive was purchased by the Petitioner in approximately 1980, for $65,000, prior to the parties' marriage. In 1991, when the parties married, there was a mortgage balance of approximately $42,000 **[FN8]**

[FN8] *This was erroneous. Testimony stipulated the mortgage balance at the time of marriage was over $47,000, but less than $48,000. This was a $6,000 error. See the endnotes at the end of this section for supporting testimony and exhibits.*

on the property and it was valued at approximately $110,000.

After the parties' marriage, the mortgage was satisfied. However, another lien was placed on the Bowling Drive property as additional security for real property on Midland Trail **[FN9]**.

[FN9] *This statement by the DRC is misleading. Testimony stipulated the amount borrowed to purchase the Midland Trail property was $52,500. The Midland Trail property was used for $38,500 collateral. The home of George Kimbler was used for $7,500 collateral. The home of Fred Damron and Mary Fowler was used for $7,500 collateral. Fowler indicated by testimony the balance of the security on the home was $6,000. As of March 2, 2002, the balance of* *collateral against the home of Fred Damron/Mary Fowler and George Kimbler is $750 on each home. See endnotes at the end of this section for supporting testimony and exhibits.*

The Midland Trail property was purchased by the Petitioner and her business partner, George Kimbler III.

Each party had an appraisal performed with the parties stipulating the value found by their respective experts. Therefore, on or about the date the Decree was entered, the property was valued at between $75,000 and $85,000.

3. The real property on Midland Trail was purchased by the Petitioner and her business partner in 1995. There was no testimony concerning the original purchase price **[FN10]**

[FN10] *This finding was erroneous. Testimony was provided regarding the amount of the original purchase in testimony. One hundred percent (100%) of the purchase price for the property was borrowed. The original amount was $52,500. See endnotes at the end of this section for supporting testimony and exhibits*

nor was there any testimony concerning the amount of the mortgage **[FN11]**.

[FN11] *This finding was erroneous. Testimony was provided regarding the amount of the mortgage. The original amount of the mortgage was $52,500. See endnotes at the end of this section for supporting testimony and exhibits*

Although there was testimony that the Bank of Ashland caused a $52,000 lien to be placed on the Bowling Drive property as additional security **[FN12]**.

[FN12] *This finding was erroneous. Testimony provided the amount of the lien used as additional collateral for the purchase of the Midland Trail property was $14,000, which was split between George/Frieda Kimbler's and Fred Damron/Mary Fowler's home, as $7,500 was placed on each* *home. Fowler gave testimony in 1998, regarding the balance on the Bowling Drive home, was $6,000. As of March 2, 2002, the balance of collateral against the home of Fred Damron/Mary Fowler and George Kimbler is $750 on each home. See endnotes at the end of this section for supporting testimony and exhibits*

Improvements on the property included a 1150 square foot building **[FN13]**

[FN13] *This finding was erroneous. The Midland Trail building had an 1150 square foot portion remodeled which Fred Damron and Mary Fowler used to operate Boyd County Tanning. This is approximately 20% of the total footage of the building, including the basement. Testimony was provided regarding 1150 square feet which was remodeled. See endnotes at the end of this section for supporting testimony and exhibits*

which the Petitioner and her partner remodeled **[FN14]**.

[FN14] *This statement by the DRC is misleading. Fred Damron was also involved in finance and labor of the remodeling, which included acquiring a $3,000 loan for materials, and the installation of a computer system, and a $3,000 air conditioning system. George Kimbler testified HomeTech provided $6,786 in materials and labor. See endnotes at the end of this section for supporting testimony and exhibits*

Thereafter, the Petitioner used one-half of the building for Boyd County Tanning **[FN15]**

[FN15] *This statement by the DRC is erroneous and misleading. Fred Damron was equally involved in Boyd County Tanning from the beginning and later purchased Mary Fowler's marital and dower interest in the business and building on November 8, 1997. The 1150 square feet remodeled and used by Boyd County Tanning was only 20%*

of the building. The remaining 80% was used by HomeTech. See endnotes at the end of this section for supporting testimony and exhibits.

and the other half was used by HomeTech (home construction, remodeling company operated by Mr. Kimbler and the Petitioner for a period of time).

After the parties' separation in July, 1997, on or about November 8, 1997, the Petitioner ~~conveyed~~ her one-half interest in the Midland Trail property to the Respondent for $25,000 plus his agreement to assume the monthly payment on the promissory note and mortgage with the Bank of Ashland recorded in Mortgage Book 620 at Page 292. The Respondent specifically agreed to indemnify and hold harmless the Petitioner for said payment. The Respondent alleged that he subsequently made four (4) payments on one-half of the required monthly amount. However, there is not proof that he made any such payments **[FN16]**.

[FN16] *This finding was erroneous stating Fred Damron did not pay Mary Fowler for the building and business. Testimony by all parties, in all hearings, stated Mary Fowler received $25,000 paid by cashier's check and Fred Damron made four monthly payments of the mortgage he assumed and held Mary Fowler harmless. After which a dispute ensued between George Kimbler (other half owner of building) and Fred Damron as Damron was paying the complete utility costs for 100% of the building. Damron testified, the Court, in a separate case, was aware of the matter in the dispute between Kimbler and Damron. See endnotes at the end of this section for supporting testimony and exhibits.*

On April 11, 1998, the Respondent conveyed that same one-half interest to his mother, Hazel B. Damron. (The Respondent had been served with the Petitioner's Petition of Dissolution on April 3, 1998) **[FN17]**.

[FN17] *This is a misleading statement by the DRC. The building and business was purchased by Fred Damron, including the dower interest of Mary Fowler. The DRC alludes the transfer appears to be improper, yet the property does not have ANY marital interest as established by testimony by both parties and by the clear language within the deed between Fred Damron and Mary Damron. Mary Damron was represented by counsel during the transfer and counsel was present during the transfer. See endnotes at the end of this section for supporting testimony and exhibits.*

The only consideration mentioned was $1.00 and the love and affection between the Respondent and his Mother **[FN18]**.

[FN18] *This finding is erroneous. Testimony established the transfer was for the original $25,000 loaned to Fred Damron by Hazel Damron to purchase the marital interest in the building and Boyd County Tanning from Mary Fowler and additional monies that Hazel had loaned Fred at other times. See endnotes at the end of this section for supporting testimony and exhibits.*

The Respondent acknowledged that the Bank of Ashland was not notified or consulted concerning the transfer.

At some point, the Bank of Ashland initiated foreclosure proceedings. It is believed that the property was subsequently sold by judicial sale **[FN19]**.

[FN19] *This is clearly erroneous. No evidence or testimony was provided in this case indicating the property had been sold by judicial sale. Testimony was provided that indicated the property had NOT been sold. The property is still owned by Hazel Damron and George Kimber, who are still in litigation over the building in another Court.*

4. On July 17, 1997, the Respondent entered into a purchase agreement with Brooks and Peggy Wells to

purchase real property located in Lakewood Village at 6424 Lodge Lane for $15,000 **[FN20]**.

[FN20] *This is erroneous. Fred Damron acted as an agent for Hazel Damron to purchase the property. He and his handicapped Son, whom he now had custody, needed a place to live and his Mother, Hazel, intended to purchase a temporary place for them to live as Mary Fowler refused to allow Fred's handicapped Son to live with them. There was NO EVIDENCE OR TESTIMONY to suggest that any marital funds were used to purchase the property. The property was purchased by Hazel Damron with her own money and she testified as such. See endnotes at the end of this section for supporting testimony and exhibits.*

However, the deed was to be in the Respondent's Mother's name, Hazel B. Damron **[FN21]**.

[FN21] *This statement by the DRC is misleading. The DRC leaves the impression Fred Damron was purchasing the property but placing it in his Mother's name. This was not the case. It was made clear to Brooks Wells Realty the purchase was being made by Hazel Damron with her own funds which would require the property to be in her name. No marital funds were used. No evidence was supplied to indicate otherwise. Hazel Damron stated she had the monies and estate to make the purchase. See endnotes at the end of this section for supporting testimony and exhibits.*

The sale was completed on July 25, 1997, with the Respondent also signing the settlement statement **[FN22]**.

[FN22] *This is a misleading statement by the DRC. Fred Damron was required to sign the settlement statement as he was acting as an agent for his Mother, but the inference Fred Damron purchased the property is erroneous as Hazel Damron testified that the purchase was with her own funds. No marital funds were used. No evidence was supplied to indicate otherwise. Hazel Damron stated she had the monies* *and estate to make the purchase. See endnotes at the end of this section for supporting testimony and exhibits.*

The payment was in cash with no mortgage on the property **[FN23]**.

[FN23] *Hazel Damron testified she purchased the property with her own funds. No marital funds were used. No evidence was supplied to indicate otherwise. Hazel Damron stated she had the monies and estate to make the purchase. See endnotes at the end of this section for supporting testimony and exhibits.*

The Respondent's mother resides in Fort Gay, West Virginia, and is employed by the Wayne County Board of Education **[FN24]**.

[FN24] *These statements are true but it is misleading to think she would not have a reason to make the purchase of the property on her own. Her testimony specifically stated she purchased the property in Lakewood Village so her handicapped Grandson and Son would have a place to live. No marital funds were used. No evidence was supplied to indicate otherwise. Hazel Damron stated she had the monies and estate to make the purchase. See endnotes at the end of this section for supporting testimony and exhibits.*

5. The parties own a 1992 Corvette which the Petitioner normally drives and three (3) Toyota MR-2 automobiles, two (2) 1986 models and one (1) 1985 model. The MR-2 is a two-seater vehicle, which is no longer produced **[FN25]**.

[FN25] *These findings are erroneous. First, the DRC failed to report the ownership of several vehicles, including the 1985 GMC Truck, 1981 Ford F350 dump truck, and the 1989 Chevrolet S-10 4X4 Truck. Second, the 1992 Corvette is not what the Petitioner normally drives. Mary began driving the Corvette, which was a Sunday pleasure vehicle, after she* *totaled the family Jeep Cherokee while drunk, on valium and marijuana, and leaving from dinner with Commissioner Ruth's relative, Jackie Ruth. She then sold the Jeep, in both parties names, without Damron's knowledge for $250. It was purchased for over $37,000 and a $10,000 non-marital vehicle, belonging to Damron, was used in trade for the Jeep. The Corvette was purchased for $37,000 with a $2,500 non-marital vehicle used in trade which belonged to Damron. Third, the three (3) Toyota MR-2 vehicles were worth less than $500 each, as one was rammed by Mary Fowler with the S-10 truck and totaled, one was wrecked a year earlier, and one was purchased for $500 for parts. See endnotes at the end of this section for supporting testimony and exhibits.*

6. The parties also owned a 1993 Jeep, which was totaled in an accident in June, 1997, involving the Petitioner **[FN26]**.

[FN26] *The Jeep was totaled by Mary Fowler while drunk, on valium and marijuana while leaving from dinner with Commissioner Ruth's relative, Jackie Ruth. Damron used a non-marital vehicle valued at $10,000 to trade for the vehicle. The vehicle was in both Damron and Fowler's names. After wrecking the Jeep, Fowler sold the vehicle for $250 without the knowledge or permission of Damron even though it was in both parties names. Fowler claimed she hit a deer, however, there was no indication from any of the reports supporting her claim. Fowler pled guilty to DUI, had a blood alcohol level of 2.1 and tests submitted by the police showed valium and marijuana in her system. See endnotes at the end of this section for supporting testimony and exhibits.*

The Jeep was financed through Bank of Ashland (now Fifth Third) **[FN27]**

[FN27] *This finding is erroneous. Fred Damron traded a non-marital vehicle valued at $10,000 in on the Jeep. The* *balance was financed through National City Bank. The Jeep was totaled and Fowler sold it for $250 without Damron's knowledge or permission. It was worth approximately $20,000 and there was a lien against it for $9,000, therefore, the equity was approximately $11,000. The vehicle was purchased for $24,000 with a non-marital asset valued at $10,000 as a trade, and the balance financed by National City Bank. See endnotes at the end of this section for supporting testimony and exhibits.*

with the bank having a deficiency judgment against the parties in the amount of $9,000. (The parties had only liability coverage on the Jeep.)

7. Additional property purchased during the marriage includes a treadmill and a living room suite in the Petitioner's possession; a John Deere riding mower in the Respondent's possession; **[FN28]**

[FN28] *This finding is erroneous. A substantial list was submitted to the DRC which was completely ignored. A substantial list of items related to the home was testified to by Mary Fowler which also was completely ignored by the DRC. See endnotes at the end of this section for supporting testimony and exhibits.*

and the inventory of Boyd County Tanning (4) four tanning beds, computer plus accessories, display cases, eight (8) chairs, and additional miscellaneous items) **[FN29]**.

[FN29] *This statement is misleading by the DRC. This equipment was purchased during the marriage in 1997, and the marital and dower interest in this equipment was purchased from Mary Fowler by Fred Damron on November 8, 1997. These items were not subject to distribution by the DRC.*

8. The Respondent purchased Carter County Tanning in late April or early May, 1998. The assets included two (2) tanning beds and one booth in addition to office furniture, etc. The Respondent rented the facility housing Carter County Tanning at $200 per month. He prepaid a year of rent, paying $2,400 **[FN30]**.

[FN30] *This statement is misleading by the DRC. This equipment was purchased on May 1, 1998, during the separation, 21 days before the divorce was final. No marital funds were used for the purchase as the money was obtained as a loan from Hazel Damron. Mary Fowler testified that she did not have any evidence showing that marital funds were ever used for the purchase. See endnotes at the end of this section for supporting testimony and exhibits.*

9. The Respondent operated Boyd County Tanning after the Petitioner's Accident in June 1997 **[FN31]**

[FN31] *This is a misleading statement by the DRC and erroneous. Mary Fowler's accident occurred on July 17, 1997, not June. Both Mary Fowler and Fred Damron operated Boyd County Tanning together from February, 1997, (Opening of Business) to July 17, 1997, the date of her driving under the influences of drugs and alcohol accident. Fowler seldom worked at the business as Damron was the primary person handling its affairs. Fowler only operated the business 15 times during the period from February to July, 1997. Damron operated the business with his Son after the date of Fowler's DUI accident. Damron purchased Fowler's marital and dower interest in the business and building on November 8, 1997. After that time, it no longer became a marital interest. See endnotes at the end of this section for supporting testimony and exhibits.*

and was continuing to operate the business on the date of the hearing. No reliable documents were presented by the Respondent concerning the income of Boyd County Tanning **[FN32]**.

[FN32] *This is erroneous. Any income derived from Boyd County Tanning was non-marital, as Mary Fowler's marital and dower interest had been purchased by Fred Damron on November 8, 1997. Damron provided documents of the income and expenses of the business in summarized spreadsheets and submitted to the Court as Respondent's Exhibits No. 4 and No. 5. These were created from expenses and income from the business. Most of the business records had been stolen by Mary Fowler in numerous burglaries, which were reported to authorities, and portions of these documents were made part of the testimony before the Court. Several records were submitted in Court by Fowler from these thefts, The business operated at a loss due to the high cost of utilities, as Damron was required to pay the utilities for the entire building and due to the thefts of products and merchandise by Fowler or her accomplices on several occasions. See the endnotes at the end of this section for supporting testimony and exhibits.*

The documents that were presented were actually entered in June, 1999, as the Respondent testified that he had trouble with the computer **[FN33]**.

[FN33] *This is a misleading statement by the DRC. This is non-marital income as Boyd County Tanning was purchased from Mary Fowler (marital and dower interests) November 8, 1997, and Carter County Tanning was purchased with non-marital funds 21 days before the decree. The spreadsheets summarizing the income and expenses of the business were prepared in June, 1999, from information provided over the years since 1997. These were submitted to the Court as Respondent's Exhibits No. 4 and No. 5. See endnotes at the end of this section for supporting testimony and exhibits.*

No checking accounts were maintained by the Respondent for Boyd County Tanning, Carter County Tanning or Campus Video (leased by the Respondent a few days after the Decree of Dissolution was entered). The actual amount of money the Respondent received from Boyd County Tanning over the last two (2) plus years is impossible to determine **[FN34]**.

[FN34] *This is a misleading statement by the DRC and erroneous. The spreadsheets summarizing the income and expenses of the business clearly indicated the business operation costs and income. The money received from Boyd County Tanning was non-marital and not subject to consideration by the DRC as Damron had purchased the marital and dower interest in the business from Fowler on November 8, 1997. See endnotes at the end of this section for supporting testimony and exhibits.*

He apparently operated on a "cash" basis, maintaining no checking accounts in his name or business names. What few payments that were made, were made with cash or by money order.

10. Although the Respondent's Social Security Number is 234-08-5561, copies of paycheck stubs from Inco Alloy were submitted which listed the Respondent's Social Security Number as 402-78-9813. However, that is actually the Petitioner's Social Security Number. The Respondent also used his son's Social Security Number when he was employed by Bellefonte Hospital **[FN35]**.

[FN35] ***Damron was clear in his testimony there had been errors, which an investigator was retained to determine and see the corrections were instrumented, which did occur per testimony. See endnotes at the end of this section for supporting testimony and exhibits.***

11. The Respondent requested that non-marital property including two (2) quilts and two (2) afghans made

by his Grandmother be returned to him. The Respondent also requested the return of a Green Machine weed eater purchased by him in 1990 prior to the parties' marriage **[FN36]**.

[FN36] *This is erroneous. The DRC failed to include all the non-marital property, which Damron indicated by exhibit and testimony. This included Boyd County Tanning, the building at Midland Trail, a $10,000 non-marital vehicle used to purchase the Jeep Cherokee, and a $2,500 non-marital vehicle used to purchase the Corvette. See endnotes at the end of this section for supporting testimony and exhibits.*

ITEMS THAT THE DRC FAILED TO INCLUDE IN HER REPORT:

Chapter 13 Bankruptcy of Mary Fowler – Paid off with Marital Funds [FN37]

[FN37] *This was clearly erroneous to fail to report the payment of $27,000 in marital funds on a Chapter 13 bankruptcy of Mary Fowler, which was filed prior to the marriage of the parties. Damron was entitled to half of the value paid upon these debts. See the endnotes at the end of this section for supporting testimony and exhibits.*

Remodeling/Improvements and Repairs – Bowling Drive [FN38]

[FN38] *This was clearly erroneous to fail to report the more than $38,000 spent from 1991 to 1998 on the home at Bowling Drive the DRC was awarding to Fowler. Numerous Remodeling/Improvements and Repairs were made to this property and it is patently unjust to award the entire value to Fowler. See endnotes at the end of this section for supporting testimony and exhibits.*

Tools – HomeTech Distribution during Marriage [FN39]

[FN39] *This was clearly erroneous to fail to report the tools Fowler received from HomeTech in 1997, from a distribution from the company. See endnotes at the end of this section for supporting testimony and exhibits.*

1985 GMC Truck [FN40]
[FN40] *This was clearly erroneous to fail to report and consider the value of the 1985 GMC truck. See endnotes at the end of this section for supporting testimony and exhibits.*

1981 Ford F350 Dump Truck [FN41]
[FN41] *This was clearly erroneous to fail to report and consider the value of the 1981 Ford dump truck. See endnotes at the end of this section for supporting testimony and exhibits.*

1989 Chevrolet S-10 4X4 Truck [FN42]
[FN42] *This was clearly erroneous to fail to report and consider the value of the 1989 Chevrolet S-10 4X4 truck. See endnotes at the end of this section for supporting testimony and exhibits.*

1989 Chevrolet S-10 Blazer [FN43]
[FN43] *This was clearly erroneous to fail to report and consider the $10,000 non-marital value used to purchase the Jeep Cherokee Fowler wrecked while under the influence of drugs and alcohol, and then later sold for $250 without Damron's knowledge. See endnotes at the end of this section for supporting testimony and exhibits.*

1989 Chevrolet S-10 Truck [FN44]
[FN44] *This was clearly erroneous to fail to report and consider the $2,500 non-marital value used to purchase the Chevrolet Corvette. See endnotes at the end of this section for supporting testimony and exhibits.*

Personal Property – Bowling Drive Home [FN45]

[FN45] *This was clearly erroneous to fail to report the more than $10,000 personal property in the home at Bowling Drive. The DRC was provided an extensive list of valuable personal property in the petitioner's possession, which included appliances and other property. This was not a just allocation of property. See endnotes at the end of this section for supporting testimony and exhibits.*

WHEREFORE, the Commissioner hereby RECOMMENDS:

1. The Petitioner shall be awarded the real property located at 16230 Bowling Drive, free of any claim of the Respondent. The Respondent shall sign any and all documents necessary to convey any record interest he may have to said property **[FN46]**.

[FN46] *This is clear error and an abuse of discretion. The mortgage was nearly $48,000 at the time of marriage and it was retired in 1994, before the divorce. Damron had a marital interest in this property based on the Brandenburg formula and had expended over $38,000 in improvements/remodeling and repairs to the home in addition to paying off the mortgage. See endnotes at the end of this section for supporting testimony and exhibits.*

2. For his share of the marital interest in the Bowling Drive property, the Respondent shall be awarded any and all marital interest in the real property located at 6424 Lodge Lane in Lakewood Village **[FN47]**,

[FN47] *This is clearly erroneous as there was not any evidence whatsoever Fred Damron purchased the real estate and his executing a purchase contract is not indicative he did so. Hazel Damron testified she purchased the property with her own funds so her Son and Grandson would have a place to live. Fred Damron verified this and the deed certainly bears this out. At worse, it might be construed as a gift to*

Fred Damron, which would make it non-marital property. There is no evidence to the contrary and any finding Fred Damron has, or had, any interest in this property is not supported by any credible evidence. See endnotes at the end of this section for supporting testimony and exhibits.

any marital interest in Carter County Tanning **[FN48]**

[FN48] *This is clearly erroneous as there was not any evidence Fred Damron used any marital funds to purchase Carter County Tanning. Hazel Damron testified that she loaned the funds for the purchase. This purchase was made 21 days before the divorce decree order. Mary Fowler testified she had no evidence marital funds were used in the purchase. Fred Damron testified the money was borrowed from his Mother. See endnotes at the end of this section for supporting testimony and exhibits.*

and the incomes earned by Boyd County Tanning between 1997 and 1999 **[FN49]**

[FN49] *This is clearly erroneous, as at the time of the hearing Fowler had conveyed her interest in the Boyd County Tanning business and the Midland Trail property to Damron for $25,000 plus the assumption of her portion of the mortgage on the Midland Trail property. A fact Fowler did not dispute, nor had she taken any action to set aside this transfer, nor make any claim she was coerced or tricked into doing so. Even though this transfer took place during the marriage, one spouse can, by agreement, convey her marital interest in property to the other spouse free and clear of any marital claims she may have. Fowler clearly accomplished this by the terms of the deed. A court has no right to terminate or change this transfer. The DRC was clearly wrong to ignore the non-marital character of the Midland Trail property and business after the conveyance to Damron and the DRC also erroneously disregarded the marital* *character of the property when it was purchased in 1995. After the transfer to Damron of Fowler's interest in the property and business for $25,000 plus the assumption of her portion of the mortgage, she no longer had any viable claim to the property and to characterize it as marital is clearly erroneous. See endnotes at the end of this section for supporting testimony and exhibits.*

3. The Petitioner shall be awarded the 1992 Corvette and the Respondent shall be awarded the three (3) Toyota MR-2 automobiles **[FN50]**.

[FN50] *The DRC found the "parties own a 1992 Corvette vehicle which the petitioner normally drives" and valued the car at $18,000. However, at the time the parties' cohabitated, the vehicle was only driven occasionally. The primary vehicle Fowler drove was a 1993 Jeep Grand Cherokee, until she wrecked it while drunk and under the influence of valium and marijuana, while returning from a date with Jackie Ruth, relative of the DRC. She pled guilty to DUI in the Boyd District Court. The Jeep was totaled and she sold it for $250 without the permission or knowledge of Damron. It was worth approximately $20,000 and there was a lien against it for $9,000, therefore, the equity was approximately $11,000. The vehicle was purchased for $24,000, with a non-marital asset valued at $10,000 as a trade, and the balance financed by National City Bank, not Bank of Ashland as erroneously found by the DRC. The DRC ignored this situation and allowed Fowler to profit to the tune of $18,000 from totaling a vehicle while drunk, on drugs and committing adultery with a married man and requiring Damron to pay for it. To add insult to injury, Damron was awarded three (3) wrecked Toyota MR-2's valued at $500 each. Unbelievable. The DRC ignored three (3) other vehicles in Fowler's possession. A 1989 Chevrolet S-10 4X4 worth $2,500. A 1985 GMC 1-1/2 ton truck with utility body worth $5,000 and a 1981 Ford F350 dump truck* *worth $3,500. The DRC also ignored the non-marital vehicles used in trade to the Corvette (Chevrolet S-10, worth $2,500) and in trade to the Jeep Grand Cherokee (Chevrolet S-10 Blazer, worth $10,000). This was clearly erroneous.*

Each party shall sign any necessary documents placing the automobiles in the appropriate names and shall be responsible for all debts associated with their assigned vehicles.

4. The Petitioner shall be awarded all of the personal items currently in her possession **[FN51]**

[FN51] *The DRC only mentioned a few items of personal property purchased during the marriage... "a treadmill and living room suite in Fowler's possession, a John Deere riding mower in Damron's possession; and the inventory of Boyd County Tanning (4)-four tanning beds, computer plus accessories, display cases and eight (8) chairs, and additional miscellaneous items." The DRC was provided with an* ***EXTENSIVE LIST*** *of valuable property in Fowler's possession, which includes appliances and other property. Apparently, the DRC intends Fowler be allowed to keep these marital items without accounting for them. This situation is patently unfair, not a just allocation of property and clearly erroneous. See endnotes at the end of this section for supporting testimony and exhibits.*

with the exception of the two (2) quilts, two (2) afghans and the Green Machine (weed eater) which shall be returned to the Respondent. The Respondent shall be awarded all of the personal items currently in his possession and not otherwise mentioned herein.

5. The Respondent shall be responsible for any debt remaining to Fifth Third Bank (formerly Bank of Ashland) **[FN52]**

[FN52] *This ruling is erroneous. Damron held harmless Fowler in the transfer of property at Midland Trail and* *assumed the portion of the mortgage which was Fowler's responsibility. Damron is only responsible for one-half of this debt as George Kimbler also owns half of the building and therefore, Damron cannot be made responsible for 100% of the debt. See endnotes at the end of this section for supporting testimony and exhibits*

and cause any lien attached to the Bowling Drive property due to such debt to be released within ninety (90) days.

6. The four (4) tanning beds, computer, display case, chairs, etc. which comprise the assets of Boyd County Tanning shall be sold **[FN53]**

[FN53] *This is clearly erroneous. The Boyd County Tanning items were included in the purchase of Fowler's interest of the Midland Trail property, for which she received $50,000 of value. To order them sold would violate the terms of the transfer. See endnotes at the end of this section for supporting testimony and exhibits.*

with the proceeds applied to the deficiency judgment at Fifth Third Bank **[FN54]**.

[FN54] *This is clearly erroneous. The deficiency judgment is for the 1993 Jeep Grand Cherokee, until Fowler wrecked it while drunk and under the influence of valium and marijuana, while returning from a date with Jackie Ruth, relative of the DRC. She pled guilty to DUI in the Boyd District Court. The Jeep was totaled and she sold it for $250 without the permission or knowledge of Damron. It was worth approximately $20,000 and there was a lien against it for $9,000, therefore, the equity was approximately $11,000. The vehicle was purchased for $24,000 with a non-marital asset valued at $10,000 as a trade and the balance financed by National City Bank, not Fifth Third Bank as erroneously found by the DRC. The DRC ignored this situation and allowed Fowler to profit to the tune of $18,000 from totaling* *a vehicle while drunk, on drugs and committing adultery with a married man and requiring Damron to pay for it. See endnotes at the end of this section for supporting testimony and exhibits.*

Any remaining debt shall be paid equally by the parties. If any proceeds remain, they shall be divided between the parties.

7. The Petitioner shall be awarded one-half of the Respondent's pension funds accumulated between June 14, 1991, and May 22, 1998, for which a Qualified Domestic Relations Order shall issue **[FN55]**.

[FN55] *This was clearly erroneous. The Court of Appeals reversed this portion of the DRC order and took the position that only Tier II benefits of Railroad Retirement can be awarded. Damron takes the position it is not subject to distribution and in light of the fact Fowler received over $200,000 as a marital award and Damron received NEGATIVE -$10,000 (Less than nothing), this was a clear abuse of discretion. See endnotes at the end of this section for supporting testimony and exhibits.*

8. The Respondent shall contact the Internal Revenue Service, as well as the Kentucky Department of Revenue, and verify that all income previously reported under an incorrect Social Security Number is properly applied to the Respondent's correct Social Security Number. The Respondent shall file with the clerk, proof of compliance. **[FN56]**

[FN56] *Damron was clear in his testimony there had been errors, which an investigator was retained to determine and see corrections were instrumented, which did occur per testimony. See endnotes at the end of this section for supporting testimony and exhibits.*

9. The Respondent shall be responsible for $1,000 of the Petitioner's attorney fees **[FN57]**

[FN57] *Counsel for Petitioner, Hon. W. Jeffrey Scott, represented the presiding Judge, C. David Hagerman in his own divorce action and failed to notify Fred Damron he had such a conflict of interest. In light of such a conflict of interest, an award of attorney fees is an abuse of discretion. Copies of case history, decree, motions, cancelled checks and testimony are included at the rear of the endnotes.*

as well as the cost of the actions, including the costs of the transcript of Mason Haynesworth's testimony **[FN58]**

[FN58] *This is an abuse of discretion. Damron did not request a transcript of Haynesworth's testimony and should not be responsible for its cost. The inclusion of Haynesworth's testimony was an error by the Lower Court, as it had nothing to do with the property division and was objected to by Damron. Haynesworth had lost a significant case to Fred Damron and would be expected to say nothing positive. Haynesworth was used as a mudslinger in a hearing about property that had nothing to do with misconduct. Haynesworth lost his case, using the same arguments, to a tribunal. Allowing this testimony, and making any form of basis from testimony regarding credibility is clear error. Damron testified about Haynesworth's testimony being inaccurate in the hearings which were not provided to the Court for review. See endnotes at the end of this section for supporting testimony and exhibits.*

and the Commissioner's fee of $540 **[FN 59]**

[FN59] *This was an abuse of discretion. DRC Commissioner, Anna H. Ruth, failed to inform the Court of her conflict of interest as the Petitioner, Mary Damron Fowler, was romantically involved with the Commissioner's relative, Jackie Ruth, during the divorce proceedings which* *is supported by testimony. See endnotes at the end of this section for supporting testimony and exhibits.*

and the Court Reporter, Cindy Thacker's fee of $180, for a total of $720, payable within twenty (20) days of the date hereof, or a show cause will issue.

This the 10th day of July, 2000.

/s/ ANNA H. RUTH
DOMESTIC RELATIONS COMMISSIONER
BOYD CIRCUIT COURT, DIVISION I

[FN60] **Burglaries, Thefts, Crimes, Destruction of Property by Mary Fowler**
DRC Ruth gave great weigh to anything negative stated by opposing parties in her decision against Damron and ignored the crimes and background of Mary Fowler. The endnotes include all such activities made part of the record by testimony.

[FN61] **Conflicting Testimony, Credibility**
During all testimony taken from Mary Fowler her testimony differed in most all instances as she could not keep her stories straight. This clearly demonstrates that Mary Fowler lacks any credibility as a witness and is not telling the truth to the Court. During the depositions and hearings Mary Fowler was asked the same questions, about the same subjects, and gave completely different answers. The following demonstrates her changes in testimony and makes ALL of her testimony far from believable. Mary Fowler attempted to have the Court believe all remodeling/improvements/repairs on the family home, for 7 years, was completed by HomeTech in most instances, which was not the case. Even if this was true, which it wasn't, it would be considered marital.

DRC Ruth failed to recognize that Mary Fowler's testimony differed during each time she gave testimony to the Court. This lends great weight that her testimony was not the truth at all. In three instances Fowler was questioned regarding the improvements/remodeling performed on the Bowling Drive home. A review of this testimony clearly shows the testimony given to the Court changes at each instance testimony is given. All testimony by Fowler is suspect.

APPENDIX B1

BOYD CIRCUIT COURT

DIVISION II

FOOTNOTES FOR ANNOTATED REPORT AND RECOMMENDATIONS OF DOMESTIC RELATIONS COMMISSIONER

JULY, 11, 2000

FOOTNOTES

For Writ of Certiorari to the United States Supreme Court

Appeal from Boyd Circuit Court
Hon. C. David Hagerman, Judge
Action No. 98-CI-00326
Court of Appeals No. 2000-CA-002406-MR
Kentucky Supreme Court No. 2002-SC-157-D

ENDNOTES

ANNOTATED FINDINGS OF FACT, REPORT AND RECOMMENDATIONS BY DRC

LEGEND:

Damron: Frederick Cecil Damron
Respondent, Appellant, Movant
Petitioner for Writ of Certiorari

Fowler: Mary Gail (Damron) Fowler
Petitioner,Appellee,Respondent
Respondent for Writ of Certiorari

Hagerman: C. David Hagerman
Presiding Lower Court Judge, Conflict of Interest, Recused October, 2002

Haynesw: Mayson Haynesworth
Witness

Hdamron: Hazel B. Damron
Witness

Howe: Thomas M. Howe
DRC, First, Recused, Conflict of Interest

Justice: Rodney S. Justice
Attorney for Frederick Cecil Damron

Lloyd: Russell Lloyd
Attorney for Ginger Hagerman, former wife of C. David Hagerman

Ruth: Anna H. Ruth
DRC, Second, Conflict of Interest

Scott: W. Jeffrey Scott
Attorney for Judge C. David Hagerman and
Mary Fowler, Conflict of Interest, withdrawn from case in October, 2002

[FN1] **DRC Anna H. Ruth – Conflict of Interest**
DRC Commissioner, Anna H. Ruth, failed to inform the Court of her conflict of interest as the Petitioner, Mary Damron Fowler, was romantically involved with the Commissioner's relative, Jackie Ruth, during the divorce proceedings. See the following supporting testimony.

Page 47 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Did you put gas in that car?

Fowler: No, I didn't. My boyfriend did last night.

Justice: Who is your boyfriend?

Fowler: Just a friend from out of town. **Jackie Ruth**.

Page 23 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Scott: Then you want some distribution of the household furniture and furnishings?

Damron: That's correct. I want to make sure that the $10,000 that's on the – owed on the Jeep is paid off. I don't feel that I should be made responsible for that 'cause, you know, I wasn't going to dinner and drugging and drinking with **Jackie Ruth** and then tearing up the vehicle.

Page 29 *Informant Recorded Interview Transcript, November 14, 2001*

Informant: I know she (Fowler) is still screwing Jackie.

Page 30

Q: **Jackie Ruth**?

Informant: Yeah.

Q: Is that is right?

Informant: Yeah, Jackie came to my house, he and Mary came to my house

Informant: Jackie was in his pitiful state of drunkenness.

Q: So, you are saying Jackie probably gives her money too.

Informant: I know Jackie gives her money; I don't know how much but I was told when Mary calls him up and says Jackie I need your credit card, he gives it to her.

[FN2] **Attorney W. Jeffrey Scott – Conflict of Interest**
Counsel for Petitioner, Hon. W. Jeffrey Scott, was representing the presiding Judge, C. David Hagerman, in his own divorce action and failed to notify Fred Damron he had such a conflict of interest. Copies of case history, decree, motions, cancelled checks and testimony are included at the rear of the endnotes in the Motion to Supplement the Record and Amend the Designation of the Record. These documents are as follows:

1. Case History, *Hagerman vs. Hagerman 2000-CA-002880-MR*
2. Decree, *Hagerman vs. Hagerman 2000-CA-002880-MR*
3. Motion, *Hagerman vs. Hagerman 2000-CA-002880-MR*
4. Check, *Hagerman vs. Hagerman 2000-CA-002880-MR*

Hagerman vs. Hagerman 2000-CA-002880-MR aka Carter County Case # 98-CI-00211. Case was filed in Carter County, Kentucky, on July 7, 1999. Counsel of Record is W. Jeffrey Scott **(Case History, Decree, Motion)**

Hagerman vs. Hagerman *2000-CA-002880-MR aka Carter County Case # 98-CI-00211.* Cancelled Check is included in the rear of the endnotes and written to W. Jeffrey Scott from C. David Hagerman **(Check).** Case testimony by C. David Hagerman was as follows as taken from transcript of testimony **(Testimony)**, Russell Lloyd attorney for Ginger Hagerman, W. Jeffrey Scott attorney for C. David Hagerman, and C. David Hagerman:

Page 192 *David Hagerman Testimony, Hagerman v. Hagerman, June 13, 2000*

Lloyd: Just briefly, how much have you paid your lawyer?

Scott: Not near enough. I can tell you that.

Hagerman: Not near what you are trying to get. I paid Jeff up to this point – I believe I paid him about a thousand, and I owe him about $1200 more prior to today. So probably by the time I get through with the whole thing Jeff's fee will be between probably close to $3000 when – is that pretty close?

Page 193

Scott: I don't know

Hagerman: Don't claim you don't know.

Lloyd: He's not under oath.

Hagerman: I've paid him about a thousand, and the last statement I got I owe him about $1200, and that was not inclusive of today's festivities.

[FN3] **Mayson Haynesworth's Testimony – Inclusion Error by the Court, Unrelated to Property Division**

The inclusion of Haynesworth's testimony was an error by the Lower Court, as it had nothing to do with the property division and was objected to by Damron. Haynesworth had lost a significant case to Frederick Damron and would be expected to say nothing positive. Haynesworth was used as a mudslinger in a hearing about property, which had nothing to do with misconduct. Haynesworth lost his case, using the same arguments, to a tribunal. Allowing this testimony and making any form of basis from testimony regarding credibility, is clear error. Damron testified about Haynesworth's testimony being inaccurate in the hearings, which were not provided to the Court for review.

Page 26 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Scott: You – you were in the courtroom when Mr. Mayson Haynesworth testified, weren't you?

Damron: Yes I was.

Scott: And he was accurate in his testimony, wasn't he?

Damron: No he was not.

Scott: What do you take issue with as far as his testimony is concerned?

Damron: I take issue with all of his testimony, but specifically, Mr. Haynesworth tried to – and again, it's kind of an issue of trying to slur my credibility – Haynesworth testified that I was found, you know, that I had been terminated, but what he failed to say that I had been reinstated and found not guilty of those issues that he – Internal Auditing Department – investigated. That's the reason there was a settlement for

$85,000 gross was for backpay for two years that I had been off work.

Page 8 *Mayson Haynesworth Testimony, Damron v. Damron, October 8, 1998*

Justice: Your Honor, show my objection. We are supposed to be inquiring as to marital property in this hearing, and he has been put on the stand and he has testified to what my client received from Norfolk Southern Railroad by way of compensation.

Justice: He hasn't testified. His credibility is not at issue.

Howe: Well, I understand. I think I've heard enough on it though.

Page 9

Justice: I thought we heard enough on this, Your Honor.

Howe: I have.

Justice: You got a subpoena in Roanoke (Virginia) issued by the Boyd Circuit Court to testify here today?

Haynesw: Yes.

Justice: Did you realize you didn't have to appear and that subpoena was not good?

Haynesw: No, I didn't realize that I didn't have to.

Justice: Did anyone pay your way here to testify?

Haynesw: Norfolk Southern paid my way here.

Justice: How did they do that?

Haynesw: We have an interest in this whole matter.

Justice: That's why. That answers my question. You have an interest in this divorce?

Haynesw: Not in the divorce.

Page 2 *Rodney S. Justice Remarks, Damron v. Damron, September 8, 1999*

Justice: (Speaking to DRC Ruth) I take issue with the relevancy of his (Mayson Haynesworth) testimony anyway.

[FN4] **Testimony by Fowler – Differences, Conflicts, All Hearing Testimony Missing from Designated Record**

There were glaring differences in the testimony of Mary Fowler in the hearing before Commissioner Howe, her deposition and the hearing testimony given before Commissioner Ruth. NONE of this hearing testimony was part of the reviewable record until Damron had the testimony transcribed as it was significant evidence, which failed to become part of the designated record.

The complete transcript of testimony is included in Motion to Supplement the Record and Amend the Designation of the Record submitted to the Court of Appeals on January 24, 2002.

See Footnote [FN61], **Conflicting Testimony, Credibility** for examples of the differences of testimony by Mary Fowler.

[FN5] **DRC Thomas Howe – Conflict of Interest and error allowing Haynesworth's Testimony**

The fact Commissioner Howe had a conflict of interest in the case further supports Damron's position the testimony of Haynesworth should not have been allowed and was an error by the Court, as "bad acts" are precluded, the hearing was about property "without regard to misconduct" and testimony which was provided in regard to Haynesworth's testimony being inaccurate. See [FN3] **Mayson Haynesworth's Testimony – Inclusion Error by the Court, Unrelated to Property Division** for supporting testimony.

[FN6] **Haynesworth's Testimony Transcript**
Haynesworth's testimony was the only testimony transcribed and made part of the reviewable record. The fact this testimony was part of the reviewable record and the remaining testimony failed to become reviewable presents a distorted view. A clear finding or appeal could not be made without the complete record designated. See [FN3] **Mayson Haynesworth's Testimony – Inclusion Error by the Court, Unrelated to Property Division** for supporting testimony.

[FN7] **Time Lapse to DRC Report, Reference to Reading Transcript**
Ten (10) months had passed since the DRC had heard the last testimony. Twenty-one (21) months had passed since the first DRC hearing. It is practically impossible to believe the DRC, with such a caseload, could accurately recall the testimony from so long ago. No transcript existed of any testimony, which was before DRC Ruth. The only transcript that existed was of Mayson Haynesworth and Depositions of Fowler and Damron in 1998. The DRC did take notes during her hearings, and review of the DRC's notes, found significant portions of her notes were inaccurate and did not reflect the testimony provided to the Court. See Annotated DRC notes for the significant examples of glaring errors found in the DRC notes.

[FN8] **Bowling Drive Property, Mortgage (Home of Fred Damron/Mary Fowler)**

The finding of a $42,000 mortgage balance at the time of marriage was erroneous. Testimony stipulated the mortgage balance at the time of marriage was over $47,000, but less than $48,000. This was a $6,000 error. See the following supporting testimony.

Page 28 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Ms. Fowler, at the time you and Mr. Damron were married, did you or did you not owe about $47,000 on the Bowling Drive property?

Fowler: Yes.

Justice: And during the marriage it was paid off?

Fowler: Yes, sir.

Page 30

Justice: So $47,000 – actually the principle was $47,000 – you paid off – paid that principle down to zero during the marriage, did you not? Yes or no?

Fowler: Yes.

Justice: Now that check was payable to whom?

Fowler: Out of our checking account to Peoples Security Bank.

Justice: Peoples Security Bank. That payment was for what?

Fowler: A house payment.

Justice: That same house payment on the house on Bowling Drive?

Fowler: Yes, sir.

Page 5 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: And there was a mortgage against it at that time of $50,000; is that correct?

Fowler: If it says that, yes.

Page 41

Justice: You owed about $50,000 on that house at the time you were married, right?

Fowler: Yes, sir.

Justice: And it was paid off after the marriage and before the divorce; is that right?

Fowler: Yes, sir.

Page 25 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Damron: It was a $50,000 loan that was on the home that we paid off during the marriage.

Page 33

Justice: While you were married, you paid off a $50,000 – I think forty-six or $47,000 mortgage. Is that correct?

Page 34

Damron: Yeah, the mortgage that was owed when we were married was almost forty-eight thousand. Just a little less than that.

Justice: And that was paid off.

Damron: That was paid off by 1994.

Justice: From what moneys?

Damron: Moneys that we had earned jointly.

Justice: So you retired that - that debt was retired early?

Damron: Yes

Page 35

Justice: Did you receive any benefit at all from paying off her mortgage on her home?

Damron: No, I did not.

Justice: Are you asking the Court to reimburse you half of those amounts – the $47,000 mortgage and the twenty-some thousand dollars you paid on her (Mary Fowler) Chapter 13 bankruptcy?

Damron: I think that would be fair, yes.

[FN9] **Midland Trail Loan, Bowling Drive Additional Security**

This statement by the DRC is misleading. Testimony stipulated the amount borrowed to purchase the Midland Trail property was $52,500. The Midland Trail property was used for $38,500 collateral. The home of George Kimbler was used for $7,500 collateral. The home of Fred Damron and Mary Fowler was used for $7,500 collateral. Fowler indicated by testimony the balance of the security on the home was $6,000. As of March 2, 2002, the balance of collateral against the home of Fred Damron/Mary Fowler and George Kimbler is $750 on each home.

Page 63 *George Kimbler Testimony, Damron v. Damron, September. 8, 1999*

Scott: And do you remember the original principle amount that you borrowed?

Kimbler: I believe it was $52,500

Page 52 *Mary Fowler Deposition, Damron v. Damron, December. 4, 1998*

Fowler: And they're (Bank of Ashland) holding my house right now, Jeff, for $6,000.

Page 19 *Fred Damron Testimony, Damron v. Damron, September. 15, 1999*

Damron: Our home, Kimbler's home was also used as the additional collateral.

[FN10] **Midland Trail – Purchase Amount**

This finding was erroneous. Testimony was provided regarding the amount of the original purchase in testimony. One hundred percent (100%) of the purchase price for the property was borrowed. The original amount was $52,500.

Page 63 *George Kimbler Testimony, Damron v. Damron, September. 8, 1999*

Scott: And do you remember the original principle amount that you borrowed?

Kimbler: I believe it was $52,500.

[FN11] **Midland Trail – Mortgage Amount**

This finding was erroneous. Testimony was provided regarding the amount of the mortgage. The original amount of the mortgage was $52,500.

Page 63 *George Kimbler Testimony, Damron v. Damron, September. 8, 1999*

Scott:	And do you remember the original principle amount that you borrowed?
Kimbler:	I believe it was $52,500

Page 18 *Fred Damron Testimony, Damron v. Damron, September. 15, 1999*

Scott:	And the other debt that you all had at the time of the decree is this approximate $52,000 indebtedness to Bank of Ashland…
Damron:	Well, it was $52,000, but there was another partner, which was George, and he testified to that. He was obligated for half of that amount, so it was actually half of the fifty-two.

[FN12] **$52,000 Lien not placed on Bowling Drive Property**

This finding was erroneous. Testimony provided the amount of the lien used as additional collateral for the purchase of the Midland Trail property was $14,000, which was split between George/Frieda Kimbler's and Fred Damron/Mary Fowler's home, as $7,500 was placed on each home. Fowler gave testimony in 1998, regarding the balance on the Bowling Drive home, which was $6,000. As of March 2, 2002, the balance of collateral against the home of Fred Damron/Mary Fowler and George Kimbler is $750 on each home.

Page 63 *George Kimbler Testimony, Damron v. Damron, September. 8, 1999*

Scott:	And do you remember the original principle amount that you borrowed?
Kimbler:	I believe it was $52,500.

Page 52 _Mary Fowler Deposition, Damron v. Damron, December. 4, 1998_

Fowler: And they're (Bank of Ashland) holding my house right now, Jeff, for $6,000.

Page 19 _Fred Damron Testimony, Damron v. Damron, September. 15, 1999_

Damron: Our home, Kimbler's home was also used as the additional collateral.

[FN13] **Midland Trail – Improvements for Boyd County Tanning**

This finding was erroneous. The Midland Trail building had an 1150 square foot portion remodeled Fred Damron and Mary Fowler used to operate Boyd County Tanning. This is approximately 20% of the total footage of the building, including the basement. Testimony was provided regarding 1150 square feet, which was remodeled.

Page 62 _George Kimbler Testimony, Damron v. Damron, September 8, 1999_

Kimbler: Well, we – me and men that worked for me – totally remodeled the square footage, which is about eleven hundred and fifty two square feet area for the tanning bed business.

[FN14] **Midland Trail – Remodeling and Boyd County Tanning**

This statement by the DRC is misleading stating that "Petitioner and her partner remodeled" the building. Fred Damron was also involved in the labor and finance of remodeling, which included acquiring a $3,000 loan for materials. The installation of a computer system, and a $3,000 air conditioning system. George Kimbler testified HomeTech provided $6,786 in materials and labor. See footnotes at the end of this section.

Page 48 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Do you recall Mr. Damron taking out a $3,000 loan to help put that (Boyd County Tanning) in?

Fowler We both did.

Justice: Did you sign it?

Fowler: I don't think I went there that time.

Page 19

Fowler: That's the only thing that he put in that business that I don't have the receipt for is a computer and a $3,000 air conditioning unit.

Page 75 *George Kimbler Testimony, Damron v. Damron, September 8, 1999*

Justice: Who paid for the materials that went into Boyd County Tanning?

Kimbler: HomeTech.

Justice: HomeTech did?

Kimbler: Yes, it did.

Justice: How much did that amount to?

Page 76

Kimbler: Material and labor was $6,786.

[FN15] Midland Trail – Percentage Utilized and Equal Involvement in Boyd County Tanning

This statement by the DRC is erroneous and misleading. Fred Damron was equally involved in Boyd County Tanning from the beginning, and later purchased Mary Fowler's marital and dower interest in the business and building on November 8, 1997. The 1150 square feet remodeled and used by Boyd County Tanning was only 20% of the building. The remaining 80% was used by HomeTech.

Page 62 *George Kimbler Testimony, Damron v. Damron, September 8, 1999*

Kimbler: Well, we – me and men that worked for me – totally remodeled the square footage, which is about eleven hundred and fifty two square feet area for the tanning bed business.

Page 29 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: How – there's been testimony that that business began in February of '97 and then you all separated in July. How much time did she spend at that location from February until July of that year?

Damron: Not really a whole lot. I was there practically every evening until, you know, sometimes eleven or midnight getting all the inventory and everything set up. There's a computer printout - … It shows ten or fifteen days during the time that it was open to her accident that she was actually there and working on that.

Damron: … to actually operate the beds or do anything in the business, you have to log on, and you have to put in your unique code,…

Justice: And records reflect that she did that ten or fifteen times?

Damron: That is correct.

[FN16] **Midland Trail & Boyd County Tanning Purchase by Fred Damron**

This finding was erroneous stating there was not any evidence that Fred Damron had paid Mary Fowler for the building and business. Testimony by all parties, in all hearings, stated Mary Fowler received $25,000 paid by cashier's check and Fred Damron made four monthly payments of the mortgage he assumed and held Mary Fowler harmless. After which a dispute ensued between George Kimbler (other half owner of building) and Fred Damron as Damron was paying the complete utility costs for 100% of the building. Damron testified, the Court, in a separate matter, was aware of the matter in the dispute between Kimbler and Damron.

Page 2 *Mary Fowler Deposition, Damron v. Damron, May 15, 1998*

Scott: Is that business (Boyd County Tanning) located in a building on real estate that you and he have acquired during this marriage?

Fowler: Yes.

Scott: After your separation, and around three months ago, you had he reached an agreement that you would convey your interest in that to him if he paid you $25,000, is that correct?

Fowler: Yes.

Scott: Did he pay you?

Fowler: Yes.

Page 4 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Fowler: I had a building with Mr. Kimbler – George Kimbler, which he (Fred Damron) bought from me for $25,000

Scott: Who bought it?

Page 5

Fowler: Fred. He gave me $25,000.

Scott: An when was it that he paid you $25,000 for your interest in the building?

Fowler: It was about three months later. (Petitioner's Exhibit No. 1 shows date of purchase to be November 8, 1997)

Page 32

Fowler: and $25,000 – I should have gotten more than that for a year and four months for living, but if the Judge wants me to give that back I will.

Page 13 _Mary Fowler Testimony, Damron v. Damron, September 8, 1999_

Scott: Did he pay you the twenty-five thousand?

Fowler: Yes, sir.

Page 32

Justice: When you conveyed your half interest in the property on – out on Midland Trail, you were represented at that time by Robert Templeton, were you not?

Fowler: Yes, sir.

Justice: Did you read this deed?

Fowler: Yes, sir, I did.

Page 33
Justice: And it says Mary – the grantor, Mary Gail Damron, hereby acknowledges that she is conveying to the grantee any and all right she has to the aforementioned property by virtue of her marriage to the grantee and expressly waives any claim she has now or may have in the future by way of dower, distributive share, inheritance or otherwise.

Justice: So he's held – you've been held harmless.

Page 17 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*
Justice: Did he (Damron) purchase your half interest in that real estate -- (Midland Trail & Boyd County Tanning)

Fowler: Yes --

Justice: Did he pay you $25,000?

Fowler: Yes, sir, he did.

Page 63 *George Kimbler Testimony, Damron v. Damron, September 8, 1999*
Scott: And do you remember the original principle amount that you borrowed?

Kimbler: I believe it was $52,500

Page 65
Kimbler: …except for two payments that Fred Damron was ordered to pay two years ago or whatever it was.

He paid two payments on it back whenever – yeah, he paid two payments on it.

Page 33 *Fred Damron Deposition, Damron v. Damron, December 4, 1998*

Scott: And in what manner have you been paying that?

Damron: There were four half-month payments made to the Bank of Ashland.

Scott: So, for four months after the date of this deed you paid $250, roughly?

Damron: Somewhere in that area.

Damron: I view that the consideration was $50,000. I assumed $25,000 of the debt and paid $25,000 to Mary.

Page 29 *Fred Damron Testimony,- Damron v. Damron, September 15, 1999*

Justice: The conveyance that the former Ms. Damron made to you of the Boyd County Tanning property and business, what were the facts and circumstances surrounding that transfer?

Damron: Surrounding the purchase?

Justice: Yes.

Damron: Mary had wanted to, basically, get out of the business, and the – she was also going through a dissolution of – with George and HomeTech – and I agreed to pay her $50,000 for the building and the business.

Justice: And who came up with that figure?

Damron: We did mutually.

Justice: Did – as far as you know, did she have legal representation with regard to that transfer?

Damron: Yes, she did.

Justice: And who was her attorney at the time?

Damron: Robert Templeton.

Justice: Did Mr. Templeton also represent her in the dissolution proceedings with Mr. Kimbler?

Damron: That is correct.

Page 30
Justice: Did – or has she filed any actions or made any attempts to set that transfer aside?

Damron: No.

Justice: Have you received any demands from any attorneys or from her with regard to that transaction?

Page 31
Damron: No, I have not.

Justice: Did you have discussions with her at the time the transaction took place?

Damron: Yes, she was actually – we were together at the business in your presence when the transaction actually occurred.

Justice: Did you have any discussions that she was transferring any claim she would have against that property in the event the divorce went through?

Damron: Yes, she was transferring her dower interest and all of her interest in the business and the building.

Justice: Did she tell you why she did that?

Damron: No, not really, she just said she didn't want to work anymore.

Page 33 *Fred Damron Deposition, Damron v. Damron, December 4, 1998*
Scott: Why did you only make four of those half monthly payments?

Damron: Well, that gets into another issue with the George Kimbler who owns the other half of it. We're now at a point where I am paying utilities and his is paying the payment.

[FN17] **Midland Trail – Conveyance from Fred Damron to Hazel Damron**
This is a misleading statement by the DRC. The building and business was purchased by Fred Damron, including the dower interest of Mary Fowler. The DRC alludes the transfer appears to be improper, yet the property does not have ANY marital interest as established by testimony by both parties and by the clear language within the deed between Fred Damron and Mary Damron. Mary Damron was represented by counsel during the transfer and counsel was present during the transfer. See [FN16] **Midland Trail & Boyd County Tanning Purchase by Fred Damron** for additional supporting testimony.

Page 17 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Did he (Damron) purchase your half interest in that real estate -- (Midland Trail & Boyd County Tanning)

Fowler: Yes --

Justice: Did he pay you $25,000?

Fowler: Yes, sir, he did.

Page 13 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Scott: Did he pay you the twenty-five thousand?

Fowler: Yes, sir.

Page 32

Justice: When you conveyed your half-interest in the property on – out on Midland Trail, you were represented at that time by Robert Templeton, were you not?

Fowler: Yes, sir.

Justice: Did you read this deed?

Fowler: Yes, sir, I did.

Page 33

Justice: And it says Mary – the grantor, Mary Gail Damron, hereby acknowledges that she is conveying to the grantee any and all right she has to the aforementioned property by virtue of her marriage to the grantee and expressly waives any claim she has now or may have in the future by way of dower, distributive share, inheritance or otherwise.

Justice: So he's held – you've been held harmless.

Page 29 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: The conveyance that the former Ms. Damron made to you of the Boyd County Tanning property and business, what were the facts and circumstances surrounding that transfer?

Damron: Surrounding the purchase?

Justice: Yes.

Damron: Mary had wanted to, basically, get out of the business, and the – she was also going through a dissolution of – with George and HomeTech – and I agreed to pay her $50,000 for the building and the business.

Justice: And who came up with that figure?

Damron: We did mutually.

Justice: Did – as far as you know, did she have legal representation with regard to that transfer?

Damron: Yes, she did.

Justice: And who was her attorney at the time?

Damron: Robert Templeton.

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Justice: Did you have discussions with her at the time the transaction took place?

Damron: Yes, she was actually – we were together at the business in your presence when the transaction actually occurred.

Justice: Did you have any discussions that she was transferring any claim she would have against that property in the event the divorce went through?

Damron: Yes, she was transferring her dower interest and all of her interest in the business and the building.

[FN18] **Midland Trail – Transfer to Hazel Damron, Consideration, Non-Marital Asset.**
This finding is erroneous. Testimony established the transfer was for the original $25,000 loaned to Fred Damron by Hazel Damron to purchase the marital interest in the building and Boyd County Tanning from Mary Fowler and additional monies that Hazel had loaned Fred at other times. See supporting testimony below.

Page 14 _Fred Damron Testimony, Damron v. Damron, September 15, 1999_

Damron: I deeded it to Mother because of money I had – I had owed her, and also I did it for – one other reason was Mary had shot at me and I felt that it was important to, you know, get her – get Mother some security.

Scott: And did you come to the Boyd County Attorney or the grand jury of the Boyd District Judge and have a criminal complaint filed against Mary for shooting at you..

Damron: Yes I did.

Scott: …or get a domestic violence order?

Damron: Yes I did.

Page 87 *Hazel Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: You have also purchased the Boyd County – a half-interest in the property that Boyd County Tanning is located on. Is that correct?

Hdamron: Right.

Justice: Did you pay Fred any money for that?

Hdamron: No.

Justice: What was the consideration for the transfer?

Hdamron: That was – he – I have helped him – or his late Father and I have helped him in many ways with loans and so forth, and he felt, real, real bad that he hadn't been able to pay me back any, and so that was the reason for that transfer.

Justice: Does he still owe you money?

Hdamron: He sure does.

Page 65 *Fred Damron Deposition, Damron v. Damron, December 4, 1998*

Scott: I believe I've seen where you conveyed your interest in this Midland Trail property that you acquired by that November 1997 deed to your mother. Do you recall doing that?

Damron: Yes.

Page 66

Scott: And what was the purpose for that?

Damron: The purpose of what, transferring it to Mother?

Scott: Yes.

Damron: Because of the debts that I owed her.

Scott: And she accepted that as payment?

Damron: Partial.

[FN19] **Midland Trail – Not Sold by Judicial Sale**
This is clearly erroneous. No evidence or testimony was provided in this case indicating the property had been sold by judicial sale. Testimony was provided that indicated the property had NOT been sold. The property is still owned by Hazel Damron and George Kimbler, who are still in litigation over the building in another Court.

Page 75 *George Kimbler Testimony, Damron v. Damron, September 8, 1999*

Justice: And the reason that property hasn't been sold is, first of all, your wife wouldn't agree to it. Isn't that correct? She had to be made a party.

Kimbler: Yeah, I believe that was one of the guidelines.

Justice: And since the Bank of Ashland had a lien on the property, they had to be made a party. Isn't that correct?

Kimbler: Yes, it is.

[FN20] **Lakewood Village – Not Marital, Purchased & Owned by Hazel Damron**

This is erroneous. Fred Damron acted as an agent for Hazel Damron to purchase the property. He and his handicapped Son, whom he now had custody, needed a place to live and his Mother, Hazel, intended to purchase a temporary place for them to live as Mary Fowler refused to allow Fred's handicapped Son to live with them. There was no evidence or testimony to suggest that any marital funds were used to purchase the property. The property was purchased by Hazel Damron with her own money and she testified as such.

Page 85 *Hazel Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: You purchased a little, kind of a cabin at Lakewood Village. Do you recall that?

Hdamron: Yes, I do.

Justice: And do you recall how much you paid for that?

Hdamron: Fifteen thousand.

Page 86

Justice: And was that paid with your own funds?

Hdamron: Right.

Justice: And for what reason did you purchase that?

Hdamron: Fred – his Son – his oldest Son – when he became fourteen, he came to live with his Dad, or wanted to live with his Dad, but Fred's wife, Mary, that's sitting right there, she didn't want him, and Stewart – his name is Stewart – and he had a terrible home life at home, and Fred tried every way in the world – he just tried every way in the world to get Mary to agree for him to live with them, and we worked it out that he would – Fred wanted him to go to Boyd County High School and – so that he could be with him and help him in the evenings with his homework and so forth, and so Fred – we had arranged – or we had decided that he would spend the weekends with me and the only time that he would have to stay with them would be four nights a week and it would not cost them anything. I was going to furnish the funds. It wouldn't hurt her – you know, any funds that she would need and so forth, so she would not agree, and so I – he had to have something to live in, and so he picked out just the cheapest thing he could get, you know, and so I paid for it.

Justice: Did Fred contribute in any way towards this purchase?

Page 87
Hdamron: No.

Page 98
Scott: Okay. Did you pay the fifteen – what'd you pay for the – was it fifteen thousand for the Lakewood Village…

Hdamron: Fifteen thousand. Exactly.

Page 16 *__Fred Damron Testimony, Damron v. Damron, September 15, 1999__*
Scott: There's a house on Lodge Lane that you had acquired during the marriage, too. Is that correct?

Damron: No, I had not acquired it.

Page 17

Scott: So does that mean no, you didn't

Damron: I did not purchase it, no. My Mother purchased it.

Page 37

Justice: House on Lodge Lane, purchased by your Mother. Is that correct?

Damron: That is correct.

Justice: And the deed is in her name. Is that also correct?

Damron: That's correct.

Page 6 *Fred Damron Deposition, Damron v. Damron, December 4, 1998*

Scott: The address there at Lakewood Village at which you sometimes stay, I believe you said is owned by your Mother; is that correct?

Damron: That is correct.

Scott: And did you deed property to her that is that address?

Damron: No, I did not.

Scott: Okay. Do you know how she acquired it?

Damron: She purchased it.

Scott: From whom?

Damron: I'm not sure of the lady's name, but the lady that has Brooks Wells Enterprises.

Scott: Did you ever own real estate at Lakewood Village?

Damron: No, I did not.

Scott: Did you pay the purchase price for your Mother to acquire this place at Lakewood Village?

Damron: No, I did not.

Page 7
Scott: Did you give money to anybody else to buy property at Lakewood Village?

Damron: No, I did not.

Page 107 *Hazel Damron Testimony, Damron v. Damron, September 15, 1999*
Justice: Mrs. Damron, do you have sufficient monies – have you had sufficient monies and estate to loan the kind of money you testified to to Mary Damron (Mary Fowler) and to your son?

Hdamron: Yes, I have.

[FN21] **Lakewood Village – Deed, Purchased by Hazel Damron**
This statement by the DRC is misleading. The DRC leaves the impression Fred Damron was purchasing the property but placing it in his Mother's name. This was not the case. It was made clear to Brooks Wells Realty the purchase was being made by Hazel Damron with her own funds which would require the property to be in her name. No marital funds were used. No evidence was supplied to indicate otherwise. Hazel Damron stated she had money and estate to make the purchase. See [FN20] **Lakewood Village – Not**

Marital, Purchased & Owned by Hazel Damron for supporting testimony.

[FN22] **Lakewood Village – Settlement Agreement, No Marital Funds**
This is a misleading statement by the DRC. Fred Damron was required to sign the settlement statement as he was acting as an agent for his Mother, but the inference Fred Damron purchased the property is erroneous as Hazel Damron testified the purchase was with her own funds. No marital funds were used. No evidence was supplied to indicate otherwise. Hazel Damron stated she had money and estate to make the purchase. See [FN20] **Lakewood Village – Not Marital, Purchased & Owned by Hazel Damron** for supporting testimony.

[FN23] **Lakewood Village – Purchased by Hazel Damron, No Marital Funds**
Hazel Damron testified she purchased the property with her own funds. No marital funds were used. No evidence was supplied to indicate otherwise. Hazel Damron stated she had money and estate to make the purchase. See [FN20] **Lakewood Village – Not Marital, Purchased & Owned by Hazel Damron** for supporting testimony.

[FN24] **Hazel Damron – Residence and Workplace**
These statements are true but it is misleading to think she would not have a reason to make the purchase of the property on her own. Her testimony specifically stated she purchased the property in Lakewood Village so her handicapped Grandson and Son would have a place to live. No marital funds were used. No evidence was supplied to indicate otherwise. Hazel Damron also testified that she had sufficient money and estate to make the purchase. See [FN20] **Lakewood Village – Not Marital, Purchased & Owned by Hazel Damron** for supporting testimony.

[FN25] **Vehicles owned by Parties**
These findings are erroneous. First, the DRC failed to report the ownership of several vehicles, including the 1985 GMC Truck, 1981 Ford F350 Dump Truck, and the 1989 Chevrolet S-10 4X4 Truck. Second, the 1992 Corvette is not what the Petitioner normally drives. Mary began driving the Corvette, which was a Sunday pleasure vehicle, after she totaled the family Jeep Cherokee while drunk, on valium and marijuana, and leaving from dinner with Commissioner Ruth's relative, Jackie Ruth. She then sold the wrecked Jeep, in both parties' names, without Damron's knowledge for $250. It was purchased for over $27,000 and a $10,000 non-marital vehicle, belonging to Damron, was used in trade for the Jeep. The Corvette was purchased for $37,000 with a $2,500 non-marital vehicle used in trade, which belonged to Damron. Third, the three (3) Toyota MR-2 vehicles were worth less than $500 each, as one was rammed by Mary Fowler with the S-10 truck and totaled, one was wrecked a year earlier, and one was purchased for $500 for parts.

1985 GMC Truck & 1981 Ford F350 Dump Truck
Page 44 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Fowler: I sold two trucks I got from HomeTech?

Justice: You got a distribution from HomeTech, and you sold those vehicles; is that right?

Fowler: Pardon me.

Justice: You got two vehicles from HomeTech and you sold those; is that right?

Fowler: Yes. And some tools.

Justice: Is that distribution from HomeTech, you all were still married were you not?

Fowler: When I got the trucks?

Justice: You got the trucks while you all were still married?

Fowler: Yes.

Page 21 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*
Scott: What other assets are there?

Damron: There's a 1985 GMC Truck. There's a 1981 Ford F-350 Dump Truck.

Scott: When were those acquired?

Damron: I believe that it was either – I'm not sure of the actual date. It may have been October or November 1997.

Page 36
Damron: As far as I know, she still owns the 1985 GMC. I'm not sure about the dump truck.

Chevrolet S-10, 4x4 Truck
Page 33 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*
Justice: Do you drive a Chevrolet S-10 pickup truck?

Page 34
Fowler: Very Seldom, yes, sir. Yes, sir.

Justice: Okay. Where is it kept?

Fowler: Stays out to my house.

Page 40 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: And then another '86 MR-2 was purchased in '97 for $2,500, which is the one that you rammed your pickup truck (Chevrolet S-10) into. That's probably the one you're thinking about.

Page 37 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Damron: and there's also a Chevrolet S-10 four-wheel-drive that sits in her driveway that she drives.

Corvette

Page 17 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Fowler: And what I have is I have a '92 Corvette, which appraises for seventeen thousand.

Page 24 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Fowler: -- we bought the Corvette and a Jeep.

Justice: How much did you pay for the Corvette?

Fowler: I don't recall.

Justice: Would it have been about $37,000?

Fowler: Yes, sir.

Justice: Has it been paid off?

Fowler: Yes.

Page 44

Justice: Did you owe on any cars?

Fowler: Yes. But we paid off the Corvette, yes.

Justice: But that was paid off during the marriage?

Fowler: Yes.

Page 36 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*
Damron: There was a $2,500 truck that was traded in on the Corvette that was also a non-marital asset.

Toyota MR-2 Vehicles, Three (3)
Page 33 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*
Justice: One of the MR-2s was purchased --

Fowler: The black -- you're telling me -- there's three of them. Two of them, two red ones --

Justice: Okay. There's three.

Fowler: Yeah.

Justice: Okay.

Fowler: One was for 500; the other was for like 2,000; the other was like twenty-some (from) for my son-in-law.

Page 40 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*
Justice: Let's see, you gave him an '85 Toyota MR-2. It was purchased in 1994 for $2,500. Is that correct?

Fowler: I'm not sure about the price?

Justice: An '86 Toyota MR-2 purchased for $500 for parts.

Justice: And then another '86 MR-2 was purchased in '97 for $2,500, which is the one that you rammed your pickup truck into. That's probably the one you're thinking about.

Page 37 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: The MR-2 automobiles you've shown in your exhibit, how much were paid for those? Are all three of them operating at the present time?

Damron: As far as driveable, no. There's a red MR-2 that's wrecked in the front.... There's another red MR-2 that – Mary took the S-10 four-wheel-drive, caved the side of it in and totaled that vehicle. Then there's the black MR-2. It was bought for $500 for parts.

[FN26] **Jeep Grand Cherokee – Totaled by Mary Fowler while drunk**

The Jeep was totaled by Mary Fowler while drunk, on Valium and marijuana while leaving from dinner with Commissioner Ruth's relative, Jackie Ruth. Damron used a non-marital vehicle valued at $10,000 to trade for the vehicle. The vehicle was in both Damron and Fowler's names. After wrecking the Jeep, Fowler sold the vehicle for $250 without the knowledge or permission of Damron. Fowler claimed she hit a deer, however, there was no indication from any of the reports supporting her claim. Fowler pled guilty to DUI, had a blood alcohol level of 2.1 and tests submitted by the police showed Valium and marijuana in her system. See supporting testimony below.

Jeep Grand Cherokee

Page 44 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Now, you say that this '92 Corvette is the only thing that you've got to drive?

Fowler: Yes, sir.

Justice: Now, that's because you wrecked the '93 Jeep Grand Cherokee in July '97 while you were drunk?

Page 45

Justice: Were you charged with DUI and plead guilty?

Fowler: Yes, I did plead guilty because I was drinking wine. I'm not going to deny that.

Justice: Alright. Did you purchase that Jeep Cherokee in March of '95 for $27,000?

Fowler: Yes and HomeTech made every payment of it because I used it for business.

Justice: And $10,000 of that was used from an automobile that Mr. Damron owned as a down payment on that vehicle wasn't it?

Justice: He traded in a '91 Chevrolet Blazer on it didn't he that his Mother gave him?

Fowler: On what?

Justice: On the Cherokee.

Fowler: Yes but I made every payment, and he drove it just as much as I did.

Justice: And you wrecked it?

Fowler: Yes, accidentally.

Page 46

Justice: How much was owed on it?

Fowler: I don't recall, sir. $8,000 or $9,000. I don't know.

Justice: Alright. And then you sold it for $250 didn't you?

Fowler: It was totaled. I was so bizarre and upset at that time that I let the guy have it.

Justice: For $250?

Fowler: That's what he gave, yes.

Page 27 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: And whose name was that vehicle (Jeep Grand Cherokee) in?

Fowler: Fred and Mary Damron.

Justice: So, did you sell it to the junkyard?

Fowler: They gave me $250 and called the wrecker tow bill free.

Justice: Did you have any estimates on the damage?

Fowler: No, I did not.

Page 28

Justice: Did you change any of the name of the ownership on the vehicle before you sold it?

Fowler: No, sir.

Justice: Did you remove Fred's name from it at all?

Fowler: No, sir, I did not.

Page 29
Justice: Did he know that you sold it when you sold it? In other words, was he aware you were going to sell it?

Fowler: No.

Page 26 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*
Fowler: There was a Jeep – the one I totaled that night, and I think at the time it was totaled, we owed probably nine thousand.

Page 37
Justice: The Grand Cherokee, that was purchased March the 20th, 1995, for $27,069.50. Isn't that correct?

Page 38
Fowler: I'm not for sure the exact amount.

Justice: Isn't it true that $10,000 towards that purchase was the trade-in of a 1991 Chevrolet Blazer?

Fowler: Right, and I sold mine, too, and give him the cash money.

Justice: And where did the Blazer come from?

Fowler: His Mother had give it to him.

Justice: Then the balance of the $17,069 was financed. Isn't that correct?

Fowler: I'm – If that's the right amount, yeah.

Justice: You all borrowed the money to… …purchase it, and then you wrecked – you totaled the vehicle.

Fowler: I had an accident, yes.

Justice: While you were drunk.

Fowler: No, I did not. I had three glasses of wine and that's what they found in my system 'cause I had the wreck or they wouldn't have stopped me for no reason.

Justice: Ms. Damron, I'm sorry, Ms. Fowler, you pled guilty to DUI, your blood alcohol was twenty-one, and the blood test showed valium and other drugs in your system. Is that not correct?

Fowler: That's – That's – I had one Valium, three glasses of wine, and that was it.

Justice: Now – and you're asking that he be required to pay half that debt on this vehicle you totaled?

Page 36 *Fred Damron Testimony, Damron v. Damron, September 15, 1998*

Justice: The debt on the Jeep Cherokee, what are you asking the Court to do with regard to that?

Damron: The debt that's remaining, of course it's on my credit history. I did not wreck and total the vehicle. I didn't cause her to do what she did, and I feel that she should be made responsible for that indebtedness and see that it is paid off.

Justice: Did any part of that purchase involve use of any non-marital funds or property by you?

Damron: Yes. Every vehicle that was purchased had some non-marital funds in it. There was a Blazer that my Mother and Father had given me that was a $10,000 value, and it was traded in against the Cherokee, and the balance was financed, so the $10,000 Blazer was a non-marital asset.

Page 23
Damron: I want to make sure that the $10,000 that's on the – owed on the Jeep is paid off. I don't feel that I should be made responsible for that 'cause, you know, I wasn't going to dinner and drugging and drinking with Jackie Ruth and then tearing up the vehicle.

Page 5 *Mary Fowler Deposition, Damron v. Damron, May 15, 1998*
Scott: Any other property you or he has in your possession acquired by gift or by inheritance or acquired during the marriage?

Fowler: His mom gave him a blazer, but we traded it in on a car (Jeep Cherokee).

[FN27] **Jeep Grand Cherokee – Financed by National City Bank**
This finding is erroneous. Fred Damron traded a non-marital vehicle valued at $10,000 in on the Jeep. The balance was financed through National City Bank. The Jeep was totaled and Fowler sold it for $250 without Damron's knowledge or

permission even though it was in both parties' names. It was worth approximately $20,000 and there was a lien against it for $9,000, therefore, the equity was approximately $11,000. The vehicle was purchased for $24,000 with a non-marital asset valued at $10,000 as a trade, and the balance financed by National City Bank. See [FN26] for supporting testimony.

[FN28] **Property Purchased – During Marriage**
This finding is erroneous. A substantial list was submitted to the DRC, which was completely ignored. A substantial list of items related to the home was testified to by Mary Fowler, which also was completely ignored by the DRC. This testimony is found in [FN61] **Credibility and Conflicting Testimony**. See also [FN25] **Vehicles owned by Parties** for a list of vehicles the DRC failed to report.

[FN29] **Boyd County Tanning – Non-Marital**
This statement is misleading by the DRC. This equipment was purchased during the marriage in 1997, and the marital and dower interest in this equipment was purchased from Mary Fowler by Fred Damron on November 8, 1997. These items were not subject to distribution by the DRC. See [FN16] **Midland Trail & Boyd County Tanning Purchase by Fred Damron** and [FN17] **Midland Trail – Conveyance from Fred Damron to Hazel Damron** for additional supporting testimony.

Page 29 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: The conveyance that the former Ms. Damron made to you of the Boyd County Tanning property and business, what were the facts and circumstances surrounding that transfer?

Damron: Surrounding the purchase?

Justice: Yes.

Damron: Mary had wanted to, basically, get out of the business, and the – she was also going through a dissolution of – with George and HomeTech – and I agreed to pay her $50,000 for the building and the business.

Justice: And who came up with that figure?

Damron: We did mutually.

Justice: Did – as far as you know, did she have legal representation with regard to that transfer?

Damron: Yes, she did.

Justice: And who was her attorney at the time?

Damron: Robert Templeton.

Page 31

Justice: Did you have discussions with her at the time the transaction took place?

Damron: Yes, she was actually – we were together at the business in your presence when the transaction actually occurred.

Justice: Did you have any discussions that she was transferring any claim she would have against that property in the event the divorce went through?

Damron: Yes, she was transferring her dower interest and all of her interest in the business and the building.

Page 2 *Mary Fowler Deposition, Damron v. Damron, May 15, 1998*

Scott: Is that business (Boyd County Tanning) located in a building on real estate that you and he have acquired during this marriage?

Fowler: Yes.

Scott: After your separation, and around three months ago, you had he reached an agreement that you would convey your interest in that to him if he paid you $25,000, is that correct?

Fowler: Yes.

Scott: Did he pay you?

Fowler: Yes.

[FN30] **Carter County Tanning – Non Marital, Non Marital Funds Purchase**

This statement is misleading by the DRC. This equipment was purchased with non-marital funds on May 1, 1998, during the separation, 21 days before the divorce was final. The money was obtained as a loan from Hazel Damron. Mary Fowler testified she did not have any evidence showing marital funds were ever used for the purchase.

Page 31 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: The Carter County Tanning business that you started in Olive Hill, where did the funds come from to purchase those materials and pre-pay the rent?

Damron: It was a loan from my Mother.

Justice: Do you have evidence of that?

Damron: Yes, I do.

Justice: Would she have evidence of that?

Damron: Yes she would.

Page 87 *Hazel Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: Are you familiar with his purchase of and lease of the Carter County Tanning property…

Hdamron: Yes.

Justice: …in Olive Hill?

Hdamron: I am.

Justice: Do you have any knowledge as to where the money came from to complete that transaction?

Page 88

Hdamron: That came from me.

Justice: Did you pay it's entirety – eight thousand some dollars?

Hdamron: Right.

Page 52 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Trace for me, if you can, any marital assets that you claim went in to establish either Carter County Tanning or the place in Huntington.

Justice: Show me..

Fowler: I can't show nothing to nobody. I can't do nothing.

Page 107 *Hazel Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: Mrs. Damron, do you have sufficient monies – have you had sufficient monies and estate to loan the kind of money you testified to to Mary Damron and your Son?

Hdamron: Yes, I have.

[FN31] **Boyd County Tanning – Operation after Fowler totaled Jeep while drunk.**

This is a misleading statement by the DRC and erroneous. Mary Fowler's accident occurred on July 17, 1997, not June. Both Mary Fowler and Fred Damron operated Boyd County Tanning from February, 1997, (Opening of Business) to July 17, 1997, the date of her driving under the influence of drugs and alcohol accident. Fowler seldom worked at the business as Damron was the primary person handling its affairs. Fowler only operated the business 15 times during the period from February to July, 1997. Damron operated the business with his Son after the date of Fowler's DUI accident. Damron purchased Fowler's marital and dower interest in the business and building on November 8, 1997. After that time, it no longer became a marital interest. See [FN16] **Midland Trail & Boyd County Tanning Purchase by Fred Damron**, [FN17] **Midland Trail – Conveyance from Fred Damron to Hazel Damron**, [FN26] **Jeep Grand Cherokee – Totaled by Mary Fowler** and [FN29] **Boyd County Tanning – Non-Marital** for supporting testimony.

[FN32] **Boyd County Tanning – Non-Marital, Income Non-Marital, Reliability of Documents**

This is erroneous. Any income derived from Boyd County Tanning was non-marital, as Mary Fowler's marital and dower interest had been purchased by Fred Damron on November 8, 1997. Damron provided documents of the income and expenses of the business in summarized spreadsheets and submitted to the Court as Respondent's Exhibits No. 4 and No. 5. These were created from expenses and income from the business. Most of the business records had been stolen by Mary Fowler in numerous burglaries, which were reported to authorities, and portions of these documents were made part of THE testimony before this Court. Several records were submitted in Court by Fowler from these thefts. The business operated at a loss due to the high cost of utilities, as Damron was required to pay the utilities for the entire building and due to the thefts of products and merchandise by Fowler or her accomplices on several occasions. See [FN60] **Burglaries, Thefts, Destruction of Property, Other – By Mary Fowler** and testimony below.

Page 33 *Fred Damron Deposition, Damron v. Damron, December 4, 1998*

Damron: Well, that gets into another issue with the George Kimbler who owns the other half of it (building on Midland Trail). We're now at a point where **I am paying utilities** and his is paying the payment.

Page 37 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Have you recently appeared at that business (Boyd County Tanning) and carried off some of the stock and trade?

Fowler: Right after my court date on October the 8th. Yes, I went out and got me a few candles, and I took 90-some dollars out of the drawer. And I'm going to subpoena and have her sworn, which she said I took $980.

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Justice:	What else did you take out of there?
Fowler:	That was it.
Justice:	Did you take any candles?
Fowler:	I just said that. Some candles and $90.
Justice:	How many candles?
Fowler:	About $140 worth.

Page 39

Justice:	Did you actually take the money out of the cash drawer or did somebody do that for you?
Fowler:	No, I did that.
Justice:	Did you tell anybody you were going to do it?
Fowler:	No, I did not.

Page 40

Justice:	There was somebody working there, wasn't there?
Fowler:	Yes. And I told her to go back to the back and show the lady a bed.
Justice:	And you took it while she was gone?
Fowler:	Yes, I sure did.

Page 48 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Now, you've carried some stuff out of there since you all separated and the divorce, haven't you?

Fowler: I went in and I took $100 and what change was in the drawer and I took six to eight candles.

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Justice: And there was a restraining order obtained on account of that, wasn't there?

Fowler: Yes.

Page 24 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Damron: I see that's another stolen document that you have in your hand that was taken out of my vehicle during the burglary.

Damron: I just want to make sure it's accurate for the record, that it's identified and where it came from.

Page 63 *Mary Fowler Testimony, Damron v. Damron, September 15, 1999*

Fowler: Yes, sir, I told her that at the last – I told you that at the last hearing. I took it out of his truck…

[FN33] **Income Summary – Boyd County Tanning/Carter County Tanning**

This is a misleading statement by the DRC. This is non-marital income as Boyd County Tanning was purchased from Mary Fowler (marital and dower interests) November 8, 1997, and Carter County Tanning was purchased with non-marital funds 21 days before the decree. The spreadsheets summarizing the income and expenses of the business were prepared in June, 1999, from information provided over the years since 1997. These were submitted to the Court as Respondent's Exhibits No. 4 and No. 5. See [FN16] **Midland Trail & Boyd County Tanning Purchase by Fred Damron** and [FN17] **Midland Trail – Conveyance from Fred Damron to Hazel Damron** for supporting testimony.

[FN34] **Boyd County Tanning – Determining Income**
This is a misleading statement by the DRC and erroneous. The spreadsheets summarizing the income and expenses of the business clearly indicated the business operation costs and income. The money received from Boyd County Tanning was non-marital and not subject to consideration by the DRC as Damron had purchased the marital and dower interest in the business from Fowler on November 8, 1997. See [FN16] **Midland Trail & Boyd County Tanning Purchase by Fred Damron** and [FN17] **Midland Trail – Conveyance from Fred Damron to Hazel Damron** for supporting testimony.

[FN35] **Social Security Number – Mix-up and Corrections**
Damron was clear in his testimony there had been errors, which an investigator was retained to determine and see the corrections were instrumented, which did occur per testimony.

Page 85 *Fred Damron Testimony, Damron v. Damron, September 8, 1999*

Damron: There was a mix-up on that number. I'll explain it. There was a mix-up on that number. That is my son's number…

Scott: Okay.

Damron: …and after we were made aware of that, I had my investigator take care of that and investigate what numbers were what.

Page 29 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: That's the – Ms. Fowler, I hand you what's been marked as Defendant's 1. Let me ask you if you can identify that.

Fowler: Yes, that came out of our checking account, yes, sir.

Justice: As a matter of fact, it has Mr. Damron's Social Security number on it, doesn't it?

Fowler: Yeah,...

Page 30

Justice: So it's no big, deep, dark secret what his Social Security number is, is it?

[FN36] **Non-Marital Property – Failure to Identify**

This is erroneous. The DRC failed to include all the non-marital property, which Damron indicated by exhibit and testimony. This included Boyd County Tanning, the building at Midland Trail, a $10,000 non-marital vehicle used to purchase the Jeep Cherokee, and a $2,500 non-marital vehicle used to purchase the Corvette. See [FN16] **Midland Trail & Boyd County Tanning Purchase by Fred Damron,** [FN25] **Vehicles owned by Parties,** [FN26] **Jeep Grand Cherokee – Totaled by Mary Fowler while drunk,** [FN29] **Boyd County Tanning – Non-Marital** for supporting testimony and the testimony below.

Page 33 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: We've entered into evidence a list of contributions that you or you and Mary jointly put into her home on Bowling Drive. Is that correct?

Damron: That is correct.

Justice: And that's a little over $30,000. Is that right?

Damron: I believe that's correct.

Justice: What are you asking the Court to do with regard to that?

Damron: The only thing I'm asking for is just an equal division. I don't want her half. I just want mine. Just an equal division of, you know, whatever we have placed in there and spent.

ITEMS THAT THE DRC FAILED TO INCLUDE IN DRC RUTH'S REPORT:

[FN37] **Chapter 13 Bankruptcy of Mary Fowler – Paid off with Marital Funds**
This was clearly erroneous to fail to report the payment of $27,000 in marital funds on a Chapter 13 bankruptcy of Mary Fowler, which was filed prior to the marriage of the parties. Damron was entitled to half of the value paid upon these debts. See the supporting testimony below.

Page 30 Mary Fowler Testimony, Damron v. Damron, September 8, 1999
Justice: Okay. Now, at the time – also at the time of the marriage you were in the midst of a Chapter 13 bankruptcy, were you not?

Fowler: Yes, sir.

Page 31
Justice: Okay. Now, that's paid out of your joint account for your Chapter 13 bankruptcy. Is that correct?

Fowler: Yes, sir.

Page 32
Justice: I see. So that was paid off during the marriage. Is that correct?

Fowler: Yes.

Justice: And he didn't file - he didn't join in this bankruptcy with you, did he?

Fowler: No.

Page 42 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*
Justice: You were in bankruptcy?

Fowler: Yes, sir.

Page 43
Justice: And that was paid off?

Fowler: Before the marriage I was in Chapter 13.

Justice: You were in Chapter 13?

Fowler: Yes.

Justice: You were paying under the Chapter 13 claim?

Fowler: Yes, before the marriage.

Justice: You were still paying on that bankruptcy at the time you and Fred got married?

Fowler: Yes, sir, I was.

Justice: And that bankruptcy was paid off during the marriage, wasn't it?

Fowler: Yes, sir it was.

Page 25 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Damron: There was also bankruptcy (Mary Fowler's), which was $27,000 that was paid off during our marriage.

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Justice: Likewise, she had filed a Chapter 13 prior to your marriage, had she not?

Damron: That is correct.

Justice: And you assisted her, through your joint efforts, you paid that off.

Page 35

Damron: We paid that off early also.

Justice: Did you receive any benefit at all by assisting her in paying off her Chapter 13 bankruptcy?

Damron: No, I did not.

Damron: It wasn't my bankruptcy. They weren't my debts.

[FN38] Remodeling/Improvements and Repairs – Bowling Drive

This was clearly erroneous to fail to report the more than $38,000 spent from 1991 to 1998 on the home at Bowling Drive the DRC was awarding to Fowler. Numerous

Remodeling/Improvements and Repairs were made to this property and it is patently unjust to award the entire value to Fowler. See supporting testimony below.

Page 33 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: We've entered into evidence a list of contributions that you or you and Mary jointly put into her home on Bowling Drive. Is that correct?

Damron: That is correct.

Justice: And that's a little over $30,000. Is that right?

Damron: I believe that's correct.

Justice: What are you asking the Court to do with regard to that?

Damron: The only thing I'm asking for is just an equal division. I don't want her half. I just want mine. Just an equal division of, you know, whatever we have placed in there and spent.

[FN39] **Tools – HomeTech Distribution during Marriage**
This was clearly erroneous to fail to report the tools Fowler received from HomeTech in 1997, from a distribution from the company. See supporting testimony below.

Page 44 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: You got two vehicles from HomeTech and you sold those; is that right?

Fowler: Yes. And some tools.

Justiee: Is that distribution from HomeTech, you all were still married were you not?

Fowler: Yes.

[FN40] **1985 GMC Truck**
This was clearly erroneous to fail to report and consider the value of the 1985 GMC truck. See [FN25] **Vehicles owned by Parties** and supporting testimony below.

Page 44 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Fowler: I sold two trucks I got from HomeTech?

Justice: You got a distribution from HomeTech, and you sold those vehicles; is that right?

Page 45

Fowler: Pardon me.

Justice: You got two vehicles from HomeTech and you sold those; is that right?

Fowler: Yes. And some tools.

Justice: Is that distribution from HomeTech, you all were still married were you not?

Fowler: When I got the trucks?

Justice: You got the trucks while you all were still married?

Fowler: Yes.

Page 21 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Scott: What other assets are there?

Damron: There's a 1985 GMC Truck. There's a 1981 Ford F-350 Dump Truck.

Scott: When were those acquired?

Damron: I believe that it was either – I'm not sure of the actual date. It may have been October or November 1997.

Page 36
Damron: As far as I know, she still owns the 1985 GMC. I'm not sure about the dump truck.

[FN41] **1981 Ford F350 Dump Truck**
This was clearly erroneous to fail to report and consider the value of the 1981 Ford dump truck. See [FN25] **Vehicles owned by Parties** and [FN40] **1985 GMC Truck** for supporting testimony.

Page 21 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*
Scott: What other assets are there?

Damron: There's a 1985 GMC Truck. There's a **1981 Ford F-350 Dump Truck.**

[FN42] **1989 Chevrolet S-10 4X4 Truck**
This was clearly erroneous to fail to report and consider the value of the 1989 Chevrolet S-10 4X4 truck. See [FN25] **Vehicles owned by Parties** and supporting testimony below.

Page 33 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*
Justice: Do you drive a Chevrolet S-10 pickup truck?

Page 34
Fowler: Very Seldom, yes, sir. Yes, sir.

Justice: Okay. Where is it kept?

Fowler: Stays out to my house.

Page 40 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: And then another '86 MR-2 was purchased in '97 for $2,500, which is the one that you rammed your pickup truck (Chevrolet S-10) into. That's probably the one you're thinking about.

Page 37 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Damron: and there's also a Chevrolet S-10 four-wheel-drive that sits in her driveway that she drives.

[FN43] **1989 Chevrolet S-10 Blazer**

This was clearly erroneous to fail to report and consider the $10,000 non-marital value used to purchase the Jeep Cherokee Fowler wrecked while under the influence of drugs and alcohol, and then later sold for $250 without Damron's knowledge. See [FN26] **Jeep Grand Cherokee – Totaled by Mary Fowler.**

Page 45 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: And $10,000 of that (purchase price for Jeep Grand Cherokee) was used from an automobile that Mr. Damron owned as a down payment on that vehicle wasn't it?

Justice: He traded in a '91 Chevrolet Blazer on it didn't he that his Mother gave him?

Fowler: On what?

Justice: On the Cherokee.

Fowler: Yes.

Page 4 *Mary Fowler Deposition, Damron v. Damron, May 15, 1998*

Scott: Any other property you or he has in your possession acquired by gift or by inheritance or acquired during the marriage?

Fowler: His mom gave him a blazer, but we traded it in on a car (Jeep Grand Cherokee).

Page 36 *Fred Damron Testimony, Damron v. Damron, September 15, 1998*

Justice: Did any part of that purchase involve use of any non-marital funds or property by you?

Damron: Yes. Every vehicle that was purchased had some non-marital funds in it. There was a Blazer that my Mother and Father had given me that was a $10,000 value, and it was traded in against the Cherokee, and the balance was financed, so the $10,000 Blazer was a non-marital asset.

[FN44] **1989 Chevrolet S-10 Truck**

This was clearly erroneous to fail to report and consider the $2,500 non-marital value used to purchase the Chevrolet Corvette. See [FN25] **Vehicles owned by Parties** and supporting testimony below.

Page 36 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Damron: There was a $2,500 truck that was traded in on the Corvette that was also a non-marital asset.

[FN45] **Personal Property – Bowling Drive Home**
This was clearly erroneous to fail to report the more than $10,000 personal property in the home at Bowling Drive. The DRC was provided an extensive list of valuable personal property in the petitioner's possession, which included appliances and other property. This was not a just allocation of property.

[FN46] **Bowling Drive – Awarded to Mary Fowler**
This is clear error and an abuse of discretion. The mortgage was nearly $48,000 at the time of marriage and it was retired in 1994, before the divorce. Damron had a marital interest in this property based on the Brandenburg formula and had expended over $38,000 in improvements/remodeling and repairs to the home in addition to paying off the mortgage. See [FN8] **Bowling Drive Property, Mortgage (Home of Fred Damron/Mary Fowler)**, [FN36] **Non-Marital Property – Failure to Identity**, [FN38] **Remodeling/Improvements and Repairs – Bowling Drive** for supporting testimony.

[FN47] **Lakewood Village – Awarded to Fred Damron, which belonged to Hazel Damron, Non-Marital, No Marital Funds used to Purchase.**
This is clearly erroneous as there was not any evidence whatsoever Fred Damron purchased the real estate and his executing a purchase contract is not indicative he did so. Hazel Damron testified she purchased the property with her own funds so that her Son and Grandson would have a place to live. Fred Damron verified this and the deed certainly bears this out. At worse, it might be construed as a gift to Fred Damron, which would make it non-marital property. There is no evidence to the contrary and any finding Fred Damron has, or had, any interest in this property, is not supported by any credible evidence. See [FN20] **Lakewood Village – Non Marital, Purchased and Owned by Hazel**

Damron, [FN21] **Lakewood Village – Deed, Purchased by Hazel Damron**, [FN22] **Lakewood Village – Settlement Agreement, No Marital Funds**, [FN23] **Lakewood Village – Purchased by Hazel Damron, No Marital Funds** for supporting testimony.

[FN48] **Carter County Tanning – Awarded to Fred Damron, Non-Marital, No Marital Funds used to Purchase.**

This is clearly erroneous as there was not any evidence Fred Damron used any marital funds to purchase Carter County Tanning. Hazel Damron testified she loaned the funds for the purchase. This purchase was made 21 days before the divorce decree order. Mary Fowler testified she had no evidence marital funds were used in the purchase. Fred Damron testified the money was borrowed from his Mother. See [FN30] **Carter County Tanning – Non-Marital, Non-Marital Funds Purchase** for supporting testimony.

[FN49] **Boyd County Tanning Income – Awarded to Fred Damron, Non-Marital, Marital and Dower Interest Purchased in 1997 from Mary Fowler.**

This is clearly erroneous, as at the time of the hearing, Fowler had conveyed her interest in the Boyd County Tanning business and the Midland Trail property to Damron for $25,000 plus the assumption of her portion of the mortgage on the Midland Trail property. A fact Fowler did not dispute, nor had she taken any action to set aside this transfer, nor make any claim she was coerced or tricked into doing so. Even though this transfer took place during the marriage, one spouse can, by agreement, convey her marital interest in property to the other spouse free and clear of any marital claims she may have. Fowler clearly accomplished this by the terms of the deed. A court has no right to terminate or change this transfer. The DRC was clearly wrong to ignore the non-marital character of the Midland Trail property and business after the conveyance to Damron and the DRC also erroneously disregarded the marital character of the property when it was purchased in 1995. After the transfer to Damron of Fowler's interest in the property and business for $25,000 plus the assumption of her portion of the mortgage, she no longer had any viable claim to the property and to characterize it as marital is clearly erroneous. See [FN16], [FN17], [FN29], [FN31], [FN32], [FN33], [FN34] for supporting testimony.

[FN50] **Vehicles Awarded – Clearly Unsupported Award** The DRC found the "parties own a 1992 Corvette vehicle which the petitioner normally drives" and valued the car at $18,000. However, at the time the parties' cohabitated, the vehicle was only driven occasionally. The primary vehicle Fowler drove was a 1993 Jeep Grand Cherokee, until she wrecked it while drunk and under the influence of valium and marijuana, while returning from a date with Jackie Ruth, relative of the DRC. She pled guilty to DUI in the Boyd District Court. The Jeep was totaled and she sold it for $250 without the permission or knowledge of Damron. It was worth approximately $20,000 and there was a lien against it for $9,000, therefore, the equity was approximately $11,000. The vehicle was purchased for $24,000, with a non-marital asset valued at $10,000 as a trade, and the balance financed by National City Bank, not Bank of Ashland as erroneously found by the DRC. The DRC ignored this situation and allowed Fowler to profit to the tune of $18,000 from totaling a vehicle while drunk, on drugs, and committing adultery with a married man and requiring Damron to pay for it. To add insult to injury, Damron was awarded three (3) wrecked Toyota MR-2's valued at $500 each. Unbelievable. The DRC ignored three (3) other vehicles in Fowler's possession. A 1989 Chevrolet S-10 4X4 worth $2,500. A 1985 GMC 1-1/2 ton truck with utility body worth $5,000 and a 1981 Ford F350 dump truck worth $3,500. The DRC also ignored the non-marital vehicles used in trade to the Corvette (Chevrolet S-10, worth $2,500) and in trade to the Jeep Grand Cherokee

(Chevrolet S-10 Blazer, worth $10,000). This was clearly erroneous. See [FN25], [FN26], [FN40], [FN41], [FN42], [FN43], [FN44] for supporting testimony.

[FN51] **Personal Property – Primarily Awarded to Mary Fowler**
The DRC only mentioned a few items of personal property purchased during the marriage… "a treadmill and living room suite in Fowler's possession, a John Deere riding mower in Damron's possession; and the inventory of Boyd County Tanning (4) four tanning beds, computer plus accessories, display cases and eight (8) chairs, and additional miscellaneous items." The DRC was provided with an **extensive list** of valuable property in Fowler's possession, which includes appliances and other property. Apparently, the DRC intends Fowler be allowed to keep these marital items without accounting for them. This situation is patently unfair, not a just allocation of property and clearly erroneous. See footnotes at the end of this section. See [FN16] **Midland Trail & Boyd County Tanning Purchase by Fred Damron**, [FN29] **Boyd County Tanning – Non-Marital**, [FN45] **Personal Property – Bowling Drive Home** for supporting testimony.

[FN52] **Debt to Bank of Ashland for Midland Trail – Awarded to Fred Damron**
This ruling is erroneous. Damron held Fowler harmless in the transfer of property at Midland Trail and assumed the portion of the mortgage, which was Fowler's responsibility. Damron is only responsible for one-half of this debt as George Kimbler also owns half of the building and therefore, Damron cannot be made responsible for 100% of the debt. See [FN11] **Midland Trail – Mortgage Amount**, [FN16] **Midland Trail & Boyd County Tanning Purchase by Fred Damron** for supporting testimony.

[FN53] **Boyd County Tanning Equipment Ordered Sold – Taken from Fred Damron as these were Non-Marital Assets**
This is clearly erroneous. The Boyd County Tanning items were included in the purchase of Fowler's interest of the Midland Trail property, for which she received $50,000 of value. To order them sold would violate the terms of the transfer. See [FN16] **Midland Trail & Boyd County Tanning Purchase by Fred Damron,** [FN29] **Boyd County Tanning – Non-Marital** for supporting testimony.

[FN54] **Debt National City Bank for Jeep Grand Cherokee Mary Fowler wrecked while drunk – Awarded to Fred Damron**
This is clearly erroneous. The deficiency judgment is for the 1993 Jeep Grand Cherokee, until Fowler wrecked it while drunk and under the influence of valium and marijuana, while returning from a date with Jackie Ruth, relative of the DRC. She pled guilty to DUI in the Boyd District Court. The Jeep was totaled and she sold it for $250 without the permission or knowledge of Damron. It was worth approximately $20,000 and there was a lien against it for $9,000, therefore, the equity was approximately $11,000. The vehicle was purchased for $24,000 with a non-marital asset valued at $10,000 as a trade and the balance financed by National City Bank, not Fifth Third Bank as erroneously found by the DRC. The DRC ignored this situation and allowed Fowler to profit to the tune of $18,000 from totaling a vehicle while drunk, on drugs, and committing adultery with a married man and requiring Damron to pay for it. See [FN26] **Jeep Grand Cherokee – Totaled by Mary Fowler while drunk** for supporting testimony.

[FN55] **Railroad Retirement – Half awarded to Mary Fowler**
This was clearly erroneous. The Court of Appeals reversed this portion of the DRC order and took the position only Tier

II benefits of Railroad Retirement can be awarded. Damron takes the position it is not subject to distribution and in light of the fact Fowler received over $200,000 as a marital award and Damron received NEGATIVE -$10,000 (Less than nothing), this was a clear abuse of discretion.

[FN56] **Social Security Number Corrections**
Damron was clear in his testimony there had been errors, which an investigator was retained to determine and see corrections were instrumented, which did occur per testimony. See [FN35] **Social Security Numbers – Mix-up and Corrections** for supporting testimony.

[FN57]**Attorney Fees – Mary Fowler's fees ordered paid by Fred Damron**
Counsel for Petitioner, Hon. W. Jeffrey Scott, represented the presiding Judge, C. David Hagerman, in his own divorce action and failed to notify Fred Damron he had such a conflict of interest. In light of such a conflict of interest, an award of attorney fees is an abuse of discretion. Copies of case history, decree, motions, cancelled checks and testimony are included at the rear of these footnotes. See [FN2] **Attorney W. Jeffrey Scott – Conflict of Interest** for supporting exhibits and testimony.

[FN58] **Transcript Fees – Transcript requested by Mary Fowler ordered paid by Fred Damron**
This is an abuse of discretion. Damron did not request a transcript of Haynesworth's testimony and should not be responsible for its cost. The inclusion of Haynesworth's testimony was an error by the Lower Court, as it had nothing to do with the property division and was objected to by Damron. Haynesworth had lost a significant case to Fred Damron and would be expected to say nothing positive. Haynesworth was used as a mudslinger in a hearing about property, which had nothing to do with misconduct. Haynesworth lost his case, using the same arguments, to a

tribunal. Allowing this testimony, and making any form of basis from testimony regarding credibility, is clear error. Damron testified about Haynesworth's testimony being inaccurate in the hearings, which were not provided to the Court for review. See footnotes at the end of this section. See [FN1] **DRC Anna H. Ruth – Conflict of Interest,** [FN3] **Mayson Haynesworth's Testimony – Inclusion Error by Court, Unrelated to Property Division**, [FN5] **DRC Thomas Howe – Conflict of Interest and error allowing Haynesworth's Testimony** for supporting testimony.

[FN59] **Commissioner Ruth & Court Fees – Ordered paid by Fred Damron**

This was an abuse of discretion. DRC Commissioner, Anna H. Ruth, failed to inform the Court of her conflict of interest as the Petitioner, Mary Damron Fowler, was romantically involved with the Commissioner's relative, Jackie Ruth, during the divorce proceedings which is supported by testimony. See [FN1] **DRC Anna H. Ruth – Conflict of Interest** for supporting testimony.

[FN60] **Burglaries, Thefts, Crimes, Destruction of Property by Mary Fowler**

DRC Ruth gave great weight to anything negative stated by opposing parties in her decision against Damron and ignored the crimes and background of Mary Fowler. See the following for supporting testimony.

Burglaries – Boyd County Tanning

Page 37 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Have you recently appeared at that business (Boyd County Tanning) and carried off some of the stock and trade?

Fowler: Right after my court date on October the 8th. Yes, I went out and got me a few candles, and I took 90-some dollars out of the drawer. And I'm going to subpoena and have her sworn, which she said I took $980.

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Justice: What else did you take out of there?

Fowler: That was it.

Justice: Did you take any candles?

Fowler: I just said that. Some candles and $90.

Justice: How many candles?

Fowler: About $140 worth.

Page 39

Justice: Did you actually take the money out of the cash drawer or did somebody do that for you?

Fowler: No, I did that.

Justice: Did you tell anybody you were going to do it?

Fowler: No, I did not.

Page 40

Justice: There was somebody working there, wasn't there?

Fowler: Yes. And I told her to go back to the back and show the lady a bed.

Justice: And you took it while she was gone?

Fowler: Yes, I sure did.

Page 48 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Now, you've carried some stuff out of there since you all separated and the divorce, haven't you?

Fowler: I went in and I took $100 and what change was in the drawer and I took six to eight candles.

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Justice: And there was a restraining order obtained on account of that, wasn't there?

Fowler: Yes.

Page 7 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Damron: No, there was a burglary also – several burglaries – at Boyd County Tanning that were reported.

Scott: When was that?

Damron: They were in late '97 and 1998 and then, when Mary had me – there were fraudulent statements made to have me removed from my home – all the documents that – primarily almost all the documents relating to my taxes in 1997 were removed.

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Damron: There were several different instances of burglaries and theft. There was an instance where she came in and robbed the cash drawer and took a bunch of inventory. That was over $1,000. There has been other cases – they have all been reported – where she has robbed the inventory back in the storeroom and emptied out all the inventory.

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Damron: There was another instance where she was involved that – with the person who did a breaking and entering on April of 1999

Justice: And the document with regard to the Carter County Tanning transaction, the original on that, was that also located in the truck that was…

Damron: That was not in the vehicle at the time. It was removed in one of the burglaries from the business.

Burglaries – Documents stolen by Mary Fowler

Page 24 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Damron: I see that's another stolen document that you have in your hand that was taken out of my vehicle during the burglary.

Damron: I just want to make sure it's accurate for the record, that it's identified and where it came from.

Page 7 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Damron: Because of my documents have been stolen in a burglary of my truck.

Scott: When was that burglary?

Damron: And there was another burglary at the business. There was a burglary on the day after my birthday that Mary was involved in the burglary.

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Damron: I see you have a good pile of stolen documents there in your folder.

Page 12

Justice: Wait a minute. Let me interpose here. If they were stolen, they were stolen.

Burglary – Fred Damron's Truck burglarized by Mary Fowler

Page 64 *Mary Fowler Testimony, Damron v. Damron, September 15, 1999*

Justice: And you had an opportunity to get in his pick-up truck, the pick-up truck he was driving, for you to obtain these documents.

Fowler: It was in – I don't recall – March.

Justice: March of what year?

Fowler: This year (March of 1999).

Page 34 *Mary Damron Testimony, Damron v. Damron, September 8, 1999*

Fowler: This is Fred to his Mother.

Justice: Okay, that's even better. That's the original of the deed from Fred to his Mother.

Justice: I'm going to ask the Court to examine this deed, especially the signatures and the stamp thereon.

Page 35

Ruth: It appears to be an original.

Justice: Where did you – how did you come by the original of a deed that was conveyed from Fred to his Mother? How did you come by that deed after you had filed the divorce?

Justice: The relevancy is, Your Honor, this document was stolen from my client's pickup truck while it was parked here in Catlettsburg as recently as six months ago.

Page 36
Justice: The relevance is that it's a stolen document. It has to do with her credibility.

Page 63 *Mary Fowler Testimony, Damron v. Damron, September 15, 1999*
Fowler: Yes, sir, I told her that at the last – I told you that at the last hearing. I took it out of his truck…

Page 80
Fowler: All the paperwork there has – yes – came from the truck,

Page 78 *Fred Damron Testimony, Damron v. Damron, September 8, 1999*
Damron: Oh, I was wondering where this went. This is another document that was stolen out of my vehicle in the burglary. In the vehicle burglary.

Page 79
Scott: Is the document what I just suggested it was?

Damron: Well, the document is a stolen document, yes, if that's what you mean.

Page 40 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: We have supplied the Court with a list of – the best that you can recollect – of things that were taken from the pick-up truck. Is that correct?

Damron: That is correct. That's the list of documents taken from the pick-up truck, along with the other physical items.

Justice: Have you seen any of those documents here in this courtroom today?

Damron: All over this table that's in front of Jeff Scott and Mary Fowler.

DUI, Totaled Jeep Grand Cherokee, Mary Fowler

Page 44 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Now, that's because you wrecked the '93 Jeep Grand Cherokee in July '97 while you were drunk?

Page 45

Justice: Were you charged with DUI and plead guilty?

Fowler: Yes, I did plead guilty because I was drinking wine. I'm not going to deny that.

Justice: And you wrecked it?

Fowler: Yes, accidentally.

Page 46

Justice: Alright. And then you sold it for $250 didn't you?

Fowler: It was totaled. I was so bizarre and upset at that time that I let the guy have it.

Justice: For $250?

Fowler: That's what he gave, yes.

Page 26 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Fowler: There was a Jeep – the one I totaled that night, and I think at the time it was totaled, we owed probably nine thousand.

Page 37

Justice: The Grand Cherokee, that was purchased March the 20th, 1995, for $27,069.50. Isn't that correct?

Page 38

Justice: You all borrowed the money to… …purchase it, and then you wrecked – you totaled the vehicle.

Fowler: I had an accident, yes.

Justice: While you were drunk.

Fowler: No, I did not. I had three glasses of wine and that's what they found in my system 'cause I had the wreck or they wouldn't have stopped me for no reason.

Justice: Ms. Damron, I'm sorry, Ms. Fowler, you pled guilty to DUI, your blood alcohol was twenty-one, and the blood test showed valium and other drugs in your system. Is that not correct?

Page 39

Fowler: That's – That's – I had one valium, three glasses of wine, and that was it.

Justice: Now – and you're asking that he be required to pay half that debt on this vehicle you totaled?

Page 36 *Fred Damron Testimony, Damron v. Damron, September 15, 1998*

Justice: The debt on the Jeep Cherokee, what are you asking the Court to do with regard to that?

Damron: The debt that's remaining, of course it's on my credit history. I did not wreck and total the vehicle. I didn't cause her to do what she did, and I feel that she should be made responsible for that indebtedness and see that it is paid off.

Page 23

Damron: I want to make sure that the $10,000 that's on the – owed on the Jeep is paid off. I don't feel that I should be made responsible for that 'cause, you know, I wasn't going to dinner and drugging and drinking with Jackie Ruth and then tearing up the vehicle.

MR-2 Rammed with S-10 4X4 by Mary Fowler

Page 40 *Mary Damron Testimony, Damron v. Damron, September 8, 1999*

Justice: And then another '86 MR-2 was purchased in '97 for $2,500, which is the one that you rammed your pickup truck into.

Page 37 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Damron: Mary took the S-10 four-wheel-drive, caved the side of it in and totaled that vehicle.

Shooting at Fred Damron by Mary Fowler

Page 14 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Damron: – one other reason was Mary had shot at me and I felt that it was important to, you know, get her – get Mother some security.

Scott: And did you come to the Boyd County Attorney or the grand jury of the Boyd District Judge and have a criminal complaint filed against Mary for shooting at you..

Damron: Yes I did.

Scott: …or get a domestic violence order?

Damron: Yes I did.

Restraining Orders obtained against Mary Fowler

Page 48 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Now, you've carried some stuff out of there since you all separated and the divorce, haven't you?

Fowler: I went in and I took $100 and what change was in the drawer and I took six to eight candles.

Page 49

Justice: And there was a **restraining order** obtained on account of that, wasn't there?

Fowler: Yes.

Page 73 *George Kimbler Testimony, Damron v. Damron, September 8, 1999*

Justice: June 11, 1987, you obtained – you filed a motion for a **restraining order** against her, did you not?

Page 74

Justice: In this motion for a **restraining order**, you say that – you are asking the Court to enter an order restraining the defendant, Mary Damron, for interfering with the business…

Page 75

Justice: So you did make this motion didn't you?

Kimbler: Yes, sir, I did.

[FN61] **Conflicting Testimony, Credibility**

During all testimony taken from Mary Fowler her testimony differed in most all instances as she could not keep her stories straight. This clearly demonstrates that Mary Fowler lacks any credibility as a witness and is not telling the truth to the Court. During the depositions and hearings Mary Fowler was asked the same questions, about the same subjects, and gave completely different answers. The following demonstrates her changes in testimony and makes ALL of her testimony far from believable. Mary Fowler attempted to have the Court believe all remodeling/improvements/repairs to the family home, for 7 years, was completed by HomeTech in most instances, which was not the case. Even if this was true, which it wasn't, it would be considered marital.

DRC Ruth failed to recognize that Mary Fowler's testimony differed during each time she gave testimony to the Court. This lends great weight that her testimony was not the truth at all. In three instances Fowler was questioned regarding the improvements/remodeling performed on the Bowling Drive home. A review of this testimony clearly shows the testimony given to the Court changes at each instance testimony is given. All testimony by Fowler is suspect.

Bowling Drive, Improvements to Home

Page 43 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Were there any improvements made to your home during the time you all were married?

Fowler: No, there's not been any improvements on that home.

Page 6 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Were there any improvements made to the real estate from the time you married Mr. Damron until you all were divorced?

Fowler: Yes.

Page 6

Justice: My question to you is what was done. I'm not asking who did it.

Scott: (To Fowler) No, damn it, anybody. Any entity that did anything at that house from June 14th.

Fowler: That was it.

Justice: Do what, now?

Fowler: That was it. A septic tank, some lights. Maybe if the electrical didn't work, somebody went out there and worked on it thirty minutes, and then polished them.

Bowling Drive, Roof

Page 35 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: What about the roof?

Fowler: That was done by HomeTech.

Justice: That wasn't done after the date of your marriage?

Fowler: Yes, HomeTech. He helped with the labor.

Page 43
Justice: HomeTech did the roof?

Fowler: Yes, sir.

Page 46 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*
Justice: Did you repair the roof?

Fowler: I put that roof on – HomeTech did for me – six months after I married him.

Page 18 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*
Justice: Was the roof replaced?

Fowler: Yes. By me and HomeTech.

Justice: Did you pay - - you say HomeTech did it?

Fowler: Yes. My money from HomeTech did it.

Justice: Well, let's back up. Did HomeTech do the work?

Fowler: No, sir. They didn't do the physical work.

Page 19
Justice: Who did the work?

Fowler: Well, two guys from HomeTech did and was paid from HomeTech and him. And he got a couple of his friends just to do labor work, just like he did the labor work.

Justice: So, a couple of the employees from HomeTech, some other people, and Fred replaced the roof; is that correct?

Fowler: Uh-huh.

Bowling Drive, Gutters & Downspouts

Page 43 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: HomeTech did the gutters and downspouts?

Fowler: Yes, sir.

Page 46 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Gutters and downspouts?

Fowler: I did that from my company, yes.

Justice: Your company did that?

Fowler: Yes.

Page 20 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Did you install gutters and downspouts when you did that (replaced roof)?

Fowler: Yes, I did from HomeTech.

Bowling Drive, Painting of Home

Page 35 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Painted the outside of the home?

Fowler: No sir, he did not.

Page 43
Justice: HomeTech painted outside of the home

Fowler: Yes, sir.

Page 20 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*
Justice: The outside of the home was painted, wasn't it?

Fowler: Yes, sir.

Justice: And how was that paid for?

Fowler: Through our checking account.

Justice: So, you and Mr. Damron paid for the painting?

Fowler: Yes.

Bowling Drive, Outside Light Fixtures
Page 36 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*
Justice: Light fixtures?

Fowler: No, sir.

Justice: There were no light fixtures installed after you were married to the outside?

Fowler: No, sir. The only thing the man did was in my living room, there is a chandelier and he went and got – I broke two cups accidentally a long time ago – my grandbaby did, and he replaced two cups on it.

Page 43
Justice: HomeTech installed the outside light fixtures?

Fowler: Yes, sir.

Page 20 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*
Justice: Okay. Did you replace the outside light fixtures?

Page 21
Fowler: Yes, sir.

Justice: How was that paid for?

Fowler: Through the money we both had in the checking account.

Bowling Drive, Septic System
Page 36 *Mary Fowler Testimony,- Damron v. Damron, October 8, 1998*
Justice: The septic system?

Fowler: We were married. Yes, he did have it emptied out for a hundred dollars.

Justice: What about the repairs to it?

Fowler: There wasn't no repairs.

Justice: Nothing was replaced there?

Fowler: No, just a brown top that cost twenty dollars.

Page 44
Justice: HomeTech repaired the septic system?

Fowler: No, that probably came out of our checking account.

Page 21 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Okay. And you said that - - you already testified that you installed a new aerator and controller for your septic system; is that right?

Fowler: Yes.

Justice: And that was paid for how?

Fowler: By me and him out of our personal checking account.

Justice: Okay. That whole thing was paid for by both of you, the septic - -

Fowler: Yes.

Justice: - - discharging pumping the tank.

Bowling Drive, Kitchen

Page 36 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Nothing bought for the kitchen?

Fowler: No, sir.

Bowling Drive, Appliances

Page 36 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: No appliances?

Fowler: No, sir. I bought a dishwasher out of our money in our checking account.

Page 44 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Did you all purchase any kitchen appliances?

Fowler: Bought a – about four years or five years ago, bought a Maytag dishwasher. That's it.

Justice: No silverware, pots and pans, no electric appliances?

Fowler: For a Christmas gift, he might have bought me something like that.

Page 12 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Any appliances purchased during the marriage?

Fowler: No, sir.

Justice: No VCR?

Fowler: No, sir.

Justice: No dishwasher?

Fowler: Yes. There was a dishwasher we both bought. Went and picked it out.

Justice: Did you purchase any kitchen appliances?

Fowler: No, sir.

Justice: No deep fryer?

Fowler: That was my Christmas present he bought me.

Justice: Okay. Steam cooker?

Page 13
Fowler: That was one of my Christmas presents.

Bowling Drive, Ceiling Fans/Light Fixtures
Page 12 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*
Justice: Were there any ceiling fans or lights purchased?

Fowler: Yes, that I bought.

Bowling Drive, Exercise Room - Carpet
Page 36 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*
Justice: No carpet in the exercise room?

Fowler: No, sir, that was done by HomeTech and they got the receipt.

Justice: Who paid for it?

Page 37
Fowler: HomeTech out of my money and he's got the checks – Mr. Kimbler does.

Justice: HomeTech paid for those?

Fowler: Yes.

Page 44 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*
Justice: Did you carpet that exercise room?

Fowler: That – yes. No, no, no, no, no. That came from HomeTech.

Bowling Drive, Cedar Shakes

Page 38 _Mary Fowler Testimony, Damron v. Damron, October 8, 1998_

Justice: What about the cedar shakes?

Fowler: This is no cedar shakes on that house.

Justice: There were no cedar shakes…

Fowler: No. Go look at it. It is setting there with none on it.

Page 22 _Mary Fowler Deposition, Damron v. Damron, December 4, 1998_

Justice: The cedar shakes were replaced on the front of the home; is that right?

Fowler: Yes, sir.

Justice: How was that paid for?

Fowler: Three or $400 worth. That was paid for by me and him both.

Bowling Drive, Basement Sealed

Page 38 _Mary Fowler Testimony, Damron v. Damron, October 8, 1998_

Justice: And sealed the basement?

Fowler: No

Page 43

Justice: HomeTech sealed the basement?

Fowler: I don't recall if it was out of our checking account or HomeTech. I believe it was out of our checking account.

Page 21 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Was the basement sealed?

Fowler: No, sir, it was not.

Bowling Drive, Termite Treatment

Page 38 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Termite treatment?

Fowler: No, I did that myself.

Justice: You did that yourself?

Fowler: Yes, I had Mr. McKenzie do it, yes. I paid for it with HomeTech's money.

Page 43

Justice: HomeTech did the termite treatment?

Fowler: No, that was taken out of our checking account.

Page 43 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: No repairs?

Fowler: The only thing that happened was termites got in and ate out the front of my house, and we did some work on that.

Page 22 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Were there any termite treatments?

Fowler: Yes, sir. One.

Justice: How was that paid for?

Fowler: By both of us out of our personal checking account.

Bowling Drive, Termite Repair
Page 6 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Were there any improvements made to the real estate from the time you married Mr. Damron until you divorced?

Fowler: Yes.

Justice: What were those improvements?

Fowler: Okay. Just the front of my house got ate out by termites, and my company HomeTech fixed it.

Bowling Drive, Air Conditioner Compressor
Page 40 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Let me go though what was done. Was an air conditioner compressor installed while you all were married?

Fowler: Yes, sir.

Page 43 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Didn't put a new air conditioner compressor in?

Fowler: No.

Page 9 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Was your air conditioning compressor replaced?

Fowler: Yes, it was.

Bowling Drive, Air Conditioner Fan Motor

Page 40 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Okay. Air conditioner fan motor, was that installed while you were married?

Fowler: Yes, sir, with both of our moneys.

Page 10 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Air conditioner fan motor, that was done right?

Fowler: Yes, sir..

Bowling Drive, Septic Aerator Motor/Controller

Page 40 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Was a septic aerator motor controller installed after the marriage on your home?

Fowler: No, sir, it was just sucked out.

Page 41

Justice: And the septic aerator motor was that installed while you were married?

Fowler: No, all I know is that it was sucked out and that was it.

Bowling Drive, Outside Light Fixtures

Page 40 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Outside light fixtures were installed while you all were married?

Fowler: No, sir.

Bowling Drive, Exercise Room – Mirrored Door

Page 40 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: A mirrored door, was that installed in the exercise room while you were married?

Fowler: No, sir.

Justice: It wasn't?

Fowler: It was but I put it there.

Justice: Was it installed?

Fowler: Yes, sir, but I paid for this out of the construction company that I worked for.

Page 41

Justice: All I asked you was a mirrored door installed in your exercise room while you were married, and then you said not and then you said yes.

Fowler: Yes, but I thought you meant by him.

Justice: No, I just asked you if it was installed while you were married?

Fowler: Rodney, yes, it was. Yes.

Treadmill

Page 41 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Did you all buy the treadmill while you all were married?

Fowler: I bought that as a Christmas present for him.

Justice: Okay. And you've got that now, right?

Page 42
Fowler: Yes, I do.

Justice: Okay. Exercise machine?

Fowler: A treadmill that I bought for him for Christmas.

Page 44 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*
Justice: Did you all outfit an exercise room with a treadmill and an exercise machine?

Fowler: That's stuff I had before I married him. I bought the treadmill for a Christmas present.

Justice: You bought the treadmill for a Christmas present for who?

Fowler: I just bought it as a Christmas present for me and him both.

Bowling Drive, Spare Bedroom – Mirrored Door
Page 42 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*
Justice: Spare bedroom – mirrored door installed?

Fowler: No, sir.

Bowling Drive, Spare Bedroom – Light Fixtures
Page 42 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*
Justice: Light fixtures?

Fowler: No, sir.

Page 12 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Were there any ceiling fans or lights purchased?

Fowler: Yes, that I bought.

Bowling Drive, Spare Bedroom – Air Vents

Page 42 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Air vents?

Fowler: No, sir

Bowling Drive, Master Bedroom

Page 42 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Master bedroom – waterbed mattress, waterbed cover and sheets and siderails?

Fowler: No, sir.

Justice: None of that was done while you all were married?

Fowler: No.

Page 45 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Waterbed?

Fowler: No, I had my waterbed for fifteen years.

Bowling Drive, Basement - Furniture

Page 42 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Furniture in the basement?

Fowler: That furniture was provided by HomeTech. It was cash that was supposed to be given to me.

Justice: That was provided by HomeTech during your marriage?

Fowler: Yes, sir.

Page 45 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: You furnished the basement family room, did you not?

Fowler: That was - well I told you – from HomeTech – three years ago or four years ago.

Page 18

Fowler: I bought a $2,000 living room suite, which came out of HomeTech.

Page 10 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Was there any furniture purchased during the marriage for the home?

Page 11

Fowler: By me and HomeTech. My money from HomeTech. I did it. I purchased the furniture.

Justice: Okay. Is it your testimony it's money you earned - -

Fowler: From HomeTech.

Justice: - - from HomeTech purchased during the marriage; is that correct?

Fowler: For the furniture

Justice: Do I understand your testimony?

Fowler: Yes, sir. For that furniture.

Justice: All right. What furniture was purchased during the marriage that's in the home?

Fowler: Just a couch and a chair; two end tables. That was it.

Justice: Couch, chair, end table. Any lamps?

Fowler: Two lamps. That was it.

Justice: Love seat?

Fowler: That came with the couch, yes.

Justice: Okay. You just said a couch. You didn't say a couch and a love seat.

Fowler: Well, it's a living room set. Couch, chair, and another chair.

Bowling Drive, Basement - Carpet

Page 43 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Carpet in that room?

Fowler: Yes, sir.

Justice: That was all provided by HomeTech?

Fowler: Yes, sir

Page 13 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Was any of the house recarpeted or any flooring placed in the house?

Fowler: The one room downstairs where I bought the carpet.

Bowling Drive, Basement Bathroom - Fixtures

Page 43 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Fixtures in the basement bathroom?

Fowler: No fixtures.

Bowling Drive, Hallway - Fixtures

Page 43 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Fixtures in the hallway?

Fowler: No. I just bought all these fixtures.

Page 12 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Hallway light fixtures?

Fowler: Not bought. They were already there. We just had them rewired and fixed.

Justice: You didn't put any new ones up?

Fowler: I put them up here myself after the divorce.

Bowling Drive, Phone System Controller

Page 43 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Phone system controller?

Fowler: That is what I had from All Season. He had it hooked up for me.

Bowling Drive, Living Room

Page 44 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Did HomeTech replace the windowsills?

Fowler: In my living room?

Justice: Yes

Fowler: Yes, sir.

Bowling Drive, Windows

Page 44 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: HomeTech replaced the windows in your home?

Fowler: Yes, sir.

Page 45 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Replace the windows in the living room and the support columns?

Fowler: That's what I did from HomeTech, yes.

Justice: HomeTech did that?

Fowler: Just some windows at the bottom, maybe $300 worth of windows, yes.

Justice: How'd HomeTech do that?

Fowler: I own a construction company. I was the owner. If I needed something, I got it for my home.

Justice: How big a window was that?

Fowler: There's probably about six – see, three or four – four windows I had to replace, and they was probably about two to three hundred apiece.

Page 46

Justice: Those windows are four by six?

Fowler: I'm not exactly how big they are.

Justice: Big windows.

Fowler: Yeah, I said two or $300. I don't know how big. I don't know the exact measurements. They're taller than what I am.

Bowling Drive, Steam Cleaning

Page 44 _Mary Fowler Testimony, Damron v. Damron, October 8, 1998_

Justice: HomeTech steam cleaned the house?

Fowler: Nobody steam cleaned the house.

Justice: There wasn't any steam cleaning done on the outside?

Fowler: I did it myself with my own money and my brothers.

ENDNOTES

ANNOTATED FINDINGS OF FACT, REPORT AND RECOMMENDATIONS BY DRC

LEGEND:
Damron: Frederick Cecil Damron
Respondent, Appellant, Movant
Petitioner for Writ of Certiorari
Fowler: Mary Gail (Damron) Fowler
Petitioner,Appellee,Respondent
Respondent for Writ of Certiorari
Hagerman: C. David Hagerman
Presiding Lower Court Judge, Conflict of Interest, Recused October, 2002
Haynesw: Mayson Haynesworth
Witness
Hdamron: Hazel B. Damron
Witness
Howe: Thomas M. Howe
DRC, First, Recused, Conflict of Interest
Justice: Rodney S. Justice
Attorney for Frederick Cecil Damron
Lloyd: Russell Lloyd
Attorney for Ginger Hagerman, former wife of C. David Hagerman
Ruth: Anna H. Ruth
DRC, Second, Conflict of Interest
Scott: W. Jeffrey Scott
Attorney for Judge C. David Hagerman and
Mary Fowler, Conflict of Interest, withdrawn from case in October, 2002

[FN1] **DRC Anna H. Ruth – Conflict of Interest**
DRC Commissioner, Anna H. Ruth, failed to inform the Court of her conflict of interest as the Petitioner, Mary Damron Fowler, was romantically involved with the Commissioner's relative, Jackie Ruth, during the divorce proceedings. See the following supporting testimony.

Page 47 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*
Justice: Did you put gas in that car?

Fowler: No, I didn't. My boyfriend did last night.

Justice: Who is your boyfriend?

Fowler: Just a friend from out of town. **Jackie Ruth**.

Page 23 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*
Scott: Then you want some distribution of the household furniture and furnishings?

Damron: That's correct. I want to make sure that the $10,000 that's on the – owed on the Jeep is paid off. I don't feel that I should be made responsible for that 'cause, you know, I wasn't going to dinner and drugging and drinking with **Jackie Ruth** and then tearing up the vehicle.

Page 29 *Informant Recorded Interview Transcript, November 14, 2001*
Informant: I know she (Fowler) is still screwing Jackie.

Page 30
Q: **Jackie Ruth**?

Informant: Yeah.

APPENDIX C

BOYD CIRCUIT COURT

DIVISION II

ORDER

DENYING HEARING, OVERRULING EXCEPTIONS, ADOPTING DRC REPORT WITHOUT ANY REVIEW

SEPTEMBER 6, 2000

ANNOTATED

For Writ of Certiorari to the United States Supreme Court

Appeal from Boyd Circuit Court
Hon. C. David Hagerman, Judge
Action No. 98-CI-00326
Court of Appeals No. 2000-CA-002406-MR
Kentucky Supreme Court No. 2002-SC-157-D

APPENDIX B1 (Exhibits for Disc. Report) Page B1-2

[END] DRC Anna H. [illegible] of interest

DRC Commissioner, Anne H. [illegible] failed to inform the Court of her conflict of interest to the Petitioner, Mary Dunlap. [illegible] with the Commissioner's relative, Jackie Roth, during the divorce proceedings. See the following indicators:

Page 17 *Mary Fowler* [illegible] *Dunlap v. Dunlap, December 8, 1993*

Justice: Did you put gas in that car?

Justice: Who is your boyfriend?

Fowler: Just a friend from [illegible] Jackie Roth.

Page [illegible] *Fred Dunlap Testimony Dunlap v. Dunlap* [illegible]

Scott: Then you want some distribution of the household furniture and furnishings?

Dunlap: [illegible] Jackie Roth and then tearing up the vehicle.

Page 19 *Informant* [illegible] *Transcript November 17, 2008* [illegible]

Informant: I know the (Fowler) is still [illegible] Jackie.

Page 20

Q: Jackie Roth?

Informant: Yeah.

ANNOTATED EXCEPTIONS ORDER OVERRULING ALL OBJECTIONS AND EXCEPTIONS WITHOUT A HEARING OR REVIEW OF THE RECORD, TRANSCRIPT OR EVIDENCE

LEGEND: Regular Type: Taken from Order
Italics Type: Annotations

COMMONWEALTH OF KENTUCKY
BOYD CIRCUIT COURT
DIVISION II
CIVIL ACTION NO. 98-CI-00326

MARY DAMRON FOWLER PETITIONER,

v. ORDER

FREDERICK CECIL DAMRON, RESPONDENT.

This matter is before the Court on Exception by Petitioner and Exceptions by Respondent to the Report of the Domestic Relations Commissioner and the Court having considered same, IT IS HEREBY ORDERED that all Exceptions are overruled **[FN1]**

[FN1] Citing Kelley v. Fedde, Ky. 64 S.W. 3d 812 (2002) Respondent (Damron) first asserts that the trial court erred in denying him a meaningful hearing on his objections to the DRC's report.

CR 53.06(2) Action on Report provides as follows:

> *Except in pendente lite matters, within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other*

> *parties.* ***Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice*** *as prescribed in CR 6.04. The court* ***after hearing*** *may adopt the report, or may modify it, or may reject it in whole or in part, or may receive further evidence, or may recommit it with instructions.*

(Emphasis added)

Responent (Damron) made a timely objection to the DRC's report and was entitled to a hearing on those objections pursuant to CR 53.06(2). As noted in Haley v. Haley, Ky. App., 573 S.W.2d 354 (1978), while a full-blown evidentiary hearing is not contemplated by the rule, the parties must be afforded an opportunity for oral argument. At motion hour on September 6, 2000, objections were overruled without ANY REVIEW of the case, transcripts or having a hearing where oral argument could be presented. Motion hour by Judge C. David Hagerman is not transcribed, recorded, and his secretary/court reporter, Peggy Arthur on April 12, 2002, informed Respondent (Damron) no records or transcripts existed of any discussions at motion hours as it was primarily used for scheduling purposes by the Court. See endnotes at the end of this section for supporting testimony and exhibits

and the Report **[FN2]**

[FN2] The report filed by the DRC was clearly erroneous and not supported by the testimony given by all parties. This is outlined clearly in the Annotated Findings of Fact and endnotes. The notes taken by the DRC also contained erroneous information as outlined in the Annotated DRC notes. The report was filed ten (10) months after the last testimony and twenty-one (21) months after the first. A review of the report shows the significant errors contained

within the entire report. See endnotes at the end of this section for supporting testimony and exhibits. See also Annotated Findings of Fact and endnotes and Annotated DRC Notes and endnotes.

of the Domestic Relations Commissioner **[FN3]**
[FN3] *DRC Commissioner Anna H. Ruth failed to inform the Court of her conflict of interest as the Petitioner, Mary Damron Fowler, was romantically involved with the Commissioner's relative, Jackie Ruth, during the divorce proceedings, which is supported by testimony. See endnotes at the end of this section for supporting testimony and exhibits. See also Annotated Findings of Fact and endnotes.*

filed on the 11th day of July 2000 **[FN4]**
Ten (10) months had passed since the DRC had heard the last testimony. Twenty-one (21) months had passed since the first DRC hearing. It is practically impossible to believe the DRC, with such a caseload, could accurately recall the testimony from so long ago. No transcript existed of any testimony, which was before DRC Ruth. The only transcript that existed was of Mayson Haynesworth and Depositions of Fowler and Damron in 1998. The DRC did take notes during her hearings, and review of the DRC's notes, found significant portions of her notes were inaccurate and did not reflect the testimony provided to the Court. See Annotated DRC Notes for the significant examples of glaring errors found in the DRC notes. See Annotated Findings of Fact and endnotes for the examples of clear error and erroneous findings reported by the DRC. See endnotes at the end of this section for supporting testimony and exhibits.

is confirmed and adopted by the Court.
This the 6th day of September 2000.

/s/ C. DAVID HAGERMAN, JUDGE **[FN5]**
See [FN5] Below.
BOYD CIRCUIT COURT, DIVISION II

A copy of the aforegoing ORDER was
This day served, by mail, upon:

W. Jeffrey Scott **[FN6]** *See Below*
P. O. Box 608
Grayson, KY 41143

Rodney S. Justice
P. O. Box 1895
Ashland, KY 41105-1895

This the 6 day of September 2000

CLERK, BOYD CIRCUIT COURT

BY: /s/____________________________,D.C.

[FN5] *Counsel for Petitioner, Hon. W. Jeffrey Scott, represented the presiding* ***Judge, C. David Hagerman*** *in his own divorce action and failed to notify Fred Damron he had such a conflict of interest. C. David Hagerman is also Chief Judge for Boyd County. He appointed Anna Ruth as DRC. Her current husband, Paul, is the insurance agent for C. David Hagerman. Until recently, Anna Ruth and C. David Hagerman were long-time neighbors, living two houses apart. Copies of case history, decree, motions, cancelled checks and testimony are included at the rear of the endnotes.*

[FN6] Counsel for Petitioner, **Hon. W. Jeffrey Scott**, represented the presiding Judge, C. David Hagerman in his own divorce action and failed to notify Fred Damron he had such a conflict of interest. C. David Hagerman is also Chief Judge for Boyd County. He appointed Anna Ruth as DRC.

Until recently, Anna Ruth and C. David Hagerman were long-time neighbors, living two houses apart. In light of such a conflict of interest, an award of attorney fees to Jeffrey Scott was an abuse of discretion. Copies of case history, decree, motions, cancelled checks and testimony are included at the rear of the endnotes.

APPENDIX C1

BOYD CIRCUIT COURT

DIVISION II

FOOTNOTES FOR ANNOTATED ORDER DENYING HEARING, OVERRULING EXCEPTIONS, ADOPTING DRC REPORT WITHOUT ANY REVIEW SEPTEMBER 6, 2000

FOOTNOTES

For Writ of Certiorari to the United States Supreme Court

Appeal from Boyd Circuit Court
Hon. C. David Hagerman, Judge
Action No. 98-CI-00326
Court of Appeals No. 2000-CA-002406-MR
Kentucky Supreme Court No. 2002-SC-157-D

ENDNOTES

ANNOTATED EXCEPTIONS ORDER OVERRULING ALL OBJECTIONS AND EXCEPTIONS WITHOUT A HEARING OR REVIEW OF THE RECORD, TRANSCRIPT OR EVIDENCE

LEGEND:

Damron: Frederick Cecil Damron
Respondent, Appellant, Movant
Petitioner for Writ of Certiorari

Fowler: Mary Gail (Damron) Fowler
Petitioner,Appellee,Respondent
Respondent for Writ of Certiorari

Hagerman: C. David Hagerman
Presiding Lower Court Judge, Conflict of Interest, Recused October 2002

Haynesw: Mayson Haynesworth
Witness

Hdamron: Hazel B. Damron
Witness

Howe: Thomas M. Howe
DRC, First, Recused, Conflict of Interest

Justice: Rodney S. Justice
Attorney for Frederick Cecil Damron

Lloyd: Russell Lloyd
Attorney for Ginger Hagerman, former wife of C. David Hagerman

Ruth: Anna H. Ruth
DRC, Second, Conflict of Interest

Scott: W. Jeffrey Scott
Attorney for Judge C. David Hagerman and
Mary Fowler, Conflict of Interest, withdrawn from case in October 2002

[FN1] **Trial Court - Failure to Hold a Meaningful Hearing on Objections**

Citing *Kelley v. Fedde*, Ky. 64 S.W. 3d 812 (2002) Respondent (Damron) first asserts that the trial court erred in denying him a meaningful hearing on his objections to the DRC's report.

CR 53.06(2) Action on Report provides as follows:

> Except in pendente lite matters, within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. **Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice** as prescribed in CR 6.04. The court **after hearing** may adopt the report, or may modify it, or may reject it in whole or in part, or may receive further evidence, or may recommit it with instructions.
>
> (Emphasis added)

Respondent (Damron) made a timely objection to the DRC's report and was entitled to a hearing on those objections pursuant to CR 53.06(2). As noted in *Haley v. Haley*, Ky. App., 573 S.W.2d 354 (1978), while a full-blown evidentiary hearing is not contemplated by the rule, the parties must be afforded an opportunity for oral argument. At motion hour on September 6, 2000, objections were overruled without ANY REVIEW of the case, transcripts or having a hearing where oral argument could be presented. Motion hour by Judge C. David Hagerman is not transcribed, recorded, and his secretary/court reporter, Peggy Arthur on April 12, 2002, informed Respondent (Damron) no records or transcripts existed of any discussions at motion hours as it was primarily used for scheduling purposes by the Court.

Fowler has taken the position that there was a "hearing of sorts", referring to motion hour, which was not the case. Damron was not afforded **any meaningful hearing.** Had the case been afforded a hearing, it would have been apparent that the report filed by the DRC was clearly erroneous and not supported by the testimony of the hearings as demonstrated in the Annotated Opinion, Annotated Findings of Fact and Annotated DRC Notes.

[FN2] **DRC Report – Clearly Erroneous**

The report filed by the DRC was clearly erroneous and not supported by the testimony given by all parties. This is outlined clearly in the Annotated Findings of Fact and endnotes. The notes taken by the DRC also contained erroneous information as outlined in the Annotated DRC notes. The report was filed ten (10) months after the last testimony and twenty-one (21) months after the first. A review of the report shows the significant errors contained within the entire report.

[FN3] **DRC Anna H. Ruth – Conflict of Interest**

DRC Commissioner, Anna H. Ruth, failed to inform the Court of her conflict of interest as the Petitioner, Mary Damron Fowler, was romantically involved with the Commissioner's relative, Jackie Ruth, during the divorce proceedings. See the following supporting testimony.

Page 47 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Did you put gas in that car?

Fowler: No, I didn't. My boyfriend did last night.

Justice: Who is your boyfriend?

Fowler: Just a friend from out of town. **Jackie Ruth**.

Page 23 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Scott: Then you want some distribution of the household furniture and furnishings?

Damron: That's correct. I want to make sure that the $10,000 that's on the – owed on the Jeep is paid off. I don't feel that I should be made responsible for that 'cause, you know, I wasn't going to dinner and drugging and drinking with **Jackie Ruth** and then tearing up the vehicle.

[FN4] **Time Lapse to DRC Report, Reference to Reading Transcript**

Ten (10) months had passed since the DRC had heard the last testimony. Twenty-one (21) months had passed since the first DRC hearing. It is practically impossible to believe the DRC, with such a caseload, could accurately recall the testimony from so long ago. No transcript existed of any testimony, which was before DRC Ruth. The only transcript that existed was of Mayson Haynesworth and Depositions of Fowler and Damron in 1998. The DRC did take notes during her hearings, and review of the DRC's notes, found significant portions of her notes were inaccurate and did not reflect the testimony provided to the Court. See Annotated DRC Notes for the significant examples of glaring errors found in the DRC notes. See Annotated Findings of Fact and endnotes for the examples of clear error and erroneous findings reported by the DRC.

[FN5] **Judge C. David Hagerman – Conflict of Interest, Using Petitioner's Attorney**

Counsel for Petitioner, Hon. W. Jeffrey Scott, represented the presiding Judge, C. David Hagerman, in his own divorce action and failed to notify Fred Damron he had such a conflict of interest. C. David Hagerman is also Chief Judge for Boyd County. He appointed Anna Ruth as DRC. Until recently, Anna Ruth and C. David Hagerman were long-time neighbors, living two houses apart. Copies of case history, decree, motions, cancelled checks and testimony are included at the rear of the endnotes. This case is now before the Kentucky Supreme Court. These documents are as follows:

1. Case History, _Hagerman vs. Hagerman_ *2000-CA-002880-MR*
2. Decree, _Hagerman vs. Hagerman_ *2000-CA-002880-MR*
3. Motion, _Hagerman vs. Hagerman_ *2000-CA-002880-MR*
4. Check, _Hagerman vs. Hagerman_ *2000-CA-002880-MR*

Hagerman vs. Hagerman *2000-CA-002880-MR aka Carter County Case # 98-CI-00211.* Case was filed in Carter County, Kentucky, on July 7, 1999. Counsel of Record is W. Jeffrey Scott **(Case History, Decree, Motion)**

Hagerman vs. Hagerman *2000-CA-002880-MR aka Carter County Case # 98-CI-00211.* Cancelled Check is included in the rear of the endnotes and written to W. Jeffrey Scott from C. David Hagerman **(Check).** Case testimony by C. David Hagerman was as follows as taken from transcript of testimony **(Testimony)**, Russell Lloyd attorney for Ginger Hagerman, W. Jeffrey Scott attorney for C. David Hagerman, and C. David Hagerman:

Page 192 _David Hagerman Testimony, Hagerman v. Hagerman, June 13, 2000_

Lloyd: Just briefly, how much have you paid your lawyer?

Scott: Not near enough. I can tell you that.

Hagerman: Not near what you are trying to get. I paid Jeff up to this point – I believe I paid him about a thousand, and I owe him about $1200 more prior to today. So probably by the time I get through with the whole thing Jeff's fee will be between probably close to $3000 when – is that pretty close?

Page 193

Scott: I don't know

Hagerman: Don't claim you don't know.

Lloyd: He's not under oath.

Hagerman: I've paid him about a thousand, and the last statement I got I owe him about $1200, and that was not inclusive of today's festivities.

[FN6] **Attorney W. Jeffrey Scott – Conflict of Interest.** Counsel for Petitioner, Hon. W. Jeffrey Scott, represented the presiding Judge, C. David Hagerman, in his own divorce action and failed to notify Fred Damron he had such a conflict of interest. In light of such a conflict of interest, an award of attorney fees was an abuse of discretion, which is one of the objections by Damron. Judge C. David Hagerman failed to allow any meaningful hearing on the objections. Copies of case history, decree, motions, cancelled checks and testimony are included at the rear of these footnotes. See [FN5] **Judge C. David Hagerman, using Petitioner's Attorney W. Jeffrey Scott**

APPENDIX D

COMMONWEALTH OF KENTUCKY

COURT OF APPEALS

OPINION
NOVEMBER 2, 2001

ANNOTATED

For Writ of Certiorari to the United States Supreme Court

Appeal from Boyd Circuit Court
Hon. C. David Hagerman, Judge
Action No. 98-CI-00326
Court of Appeals No. 2000-CA-002406-MR
Kentucky Supreme Court No. 2002-SC-157-D

Scott: Not real enough [illegible]

Hagerman: Oh now that you are [illegible] I paid [illegible] up [illegible] a thousand, and I owe him about $4200 more plus to today's [illegible] I get through with the whole thing, let's see, will be between probably close to $2100 when [illegible] is that pretty close?

Page 175

Scott: I don't know.

Hagerman: Don't pressure me, don't know.

Lloyd: he's not under oath.

Hagerman: I've paid him about a thousand, and the last statement I got I owe him about $4200, and that was not inclusive of today's festivities.

[FN6] Attorney [illegible] conflict of interest. Counsel for Defendant [illegible] represented the previously [illegible] such a conflict of interest. In light of such a conflict of interest, an award of attorney fees was an abuse of discretion, which is one of the objections by Cannon. Judge C. David Hagerman failed to allow any meaningful hearing on the objection. Copies of case history, dockets, multi-cancelled checks and testimony are included at the rear of these footnotes. See [FN7], Judge C. David Hagerman, being Petitioner's Attorney W. Jeffrey Scott.

ANNOTATED OPINION

LEGEND: Regular Type: Taken from Opinion
Italics Type: Annotations

COMMONWEALTH OF KENTUCKY

COURT OF APPEALS

NO. 2000-CA-002406-MR

FREDERICK CECIL DAMRON APPELLANT,

vs. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 98-CI-00326

MARY DAMRON FOWLER APPELLEE

OPINION AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

** ** ** ** ** ** **

BEFORE: EMBERTON, MILLER, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Frederick Damron (Fred) appeals the judgment of the Boyd Circuit Court dividing the real and personal property acquired by him and his former spouse, Mary Fowler (Mary). He further contends the court erred in awarding Mary $1,000 in attorney fees. Having reviewed the record **[FN1]**

[FN1] *This is clearly erroneous. First, the Trial Court failed to hold a meaningful hearing on objections. Second, the record is deficient and presents a distorted view. Over six (6) hours of testimony are missing from the designated record, which is the primary case of Damron. A clear appeal cannot, and could not, be obtained, with the current record. Third, the Courts failed to allow the record to be supplemented. Damron made motions to include the entire transcript of all hearings, which were denied. Annotations of this Opinion, the DRC Recommendations and Order, the Exceptions Order and the DRC Notes have been made with the testimony from these transcripts. Review of these annotations shows how misguided, unsupported, unjust, gender biased and prejudiced the rulings are on this case. This is based on the actual Trial Court proceedings. The record before the Court of Appeals does not reflect the Trial Court proceedings and prevented the Appellant a method of clear appeal. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

and applicable law, **[FN2]**

[FN2] *Numerous statutes, laws, codes and the U.S. Constitution were violated in this case in the handing down of orders from the DRC to the Court of Appeals. These have been, and are being, brought to the attention of the Courts, as even Damron has been denied his right to due process in having the evidence in his case heard. Damron has also been denied his right to due process by the failure of the Lower Court to hold any meaningful hearings on the objections to the DRC report. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes. Several of the most significant violations of statutes, codes, laws and The Constitution are expanded on in the endnotes of this section. The most significant areas are as follows:*

1. *CR 53.06(2) Action of Report (Lower Court)*
   Failure to hold meaningful hearing on objections.

2. *CR 75.08 (Court of Appeals)*
   Denial of complete record designated for review. Current record presents a distorted view. Denial of supplementation of record and amended designation of record improper.

3. *U.S.C.A. Const. Amendment 14 (Lower Court, Court of Appeals)*

Due process rights violated. No meaningful hearing. Unable to present evidence supporting position.

4. *KRS 403.190 (DRC, Lower Court, Court of Appeals)*
   Courts indulged heavily with total disregard to the requirements of this statute. Property not first separated. No equal division.

5. *CR 52.01 (DRC, Lower Court, Court of Appeals)*
   Violated requirement for "rendering appropriate judgment"

6. *Unjust Enrichment (DRC, Lower Court)*

7. *Equal Protection Under the Law (DRC, Lower Court)*

8. *Abuse of Discretion (DRC, Lower Court)*

9. *Failure to Report Conflicts of Interest (DRC, Lower Court)*

10. *Abuse of Chalupa v. Chalupa, 830 S.W. 2d 391 Ky. App. (1992)*
    Application of this case was improper use of case law.

11. *Other Areas not included at this time.*

we adjudge the trial court neither abused its discretion **[FN3]**

[FN3] *Nothing could be further from the truth. The Court* ***DID ABUSE*** *their discretion.* ***First,*** *the same attorney* *represented the presiding Judge as Appellee (Fowler), and awarded fees by the Judge, is an abuse in itself. Second, the DRC and Lower Court failed to follow the laws and statutes governing this matter are also an abuse of discretion. See [FN2]. Third, the Lower Court failed to hold any meaningful hearing on the objections to the DRC report as required by CR 53.06(2). Fourth, marital and non-marital property was not separated. Fifth, the DRC offset property awards to the Appellee with property that was not owned by EITHER party. Sixth, the DRC misstated financial values to the detriment of the Appellant as shown by the TRUE record. Seventh, the DRC failed to report a substantial amount of the marital assets in the Appellee's possession, which resulted in an unjust enrichment. Eighth, the DRC and Lower Court failed to apply equal protection to the Appellant under the law. To state that the Trial Court did not abuse its discretion heavily overlooks the outrageous awards which amount to the Appellee receiving over $200,000 and the Appellant receiving NEGATIVE --$10,000, which is less than nothing. The DRC has even attempted to justify her award with an offset of property that was not owned by either party. Simply put, if the court wishes to punish the Appellant, that forum would be with criminal charges and not hiding behind the "discretion of the court" rule to take everything a party has* *without due process of law. It was even an abuse of discretion for the Trial Court to fail to have a hearing on the exceptions of the DRC findings. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

nor committed clear error on the allocation of property **[FN4]**

[FN4] *This is an erroneous finding. The DRC Recommendations and Order are not supported by testimony, even by the Appellee and her witnesses. Some findings are not supported by any evidence, therefore clearly erroneous. Simply reviewing the true record reveals the DRC Findings of Fact, Report and Recommendations by DRC to be almost 100% CLEAR ERROR. Most of the facts were ignored or misstated by the DRC to the detriment of the Appellant. The Annotated Opinion, Annotated Finding of Fact, Report and Recommendations by DRC, Annotated Exception Order and Annotated DRC Notes CLEARLY show that the majority of the report was erroneous. It was also CLEAR ERROR by the Lower Court to deny the Appellant a meaningful hearing on the objections to the DRC report. Such a hearing would* *have afforded Appellant the opportunity to demonstrate these facts to the Court.*

There were glaring differences in the testimony of Mary Fowler in the hearing before Commissioner Howe, her deposition and the hearing testimony given before Commissioner Ruth. NONE of this hearing testimony was part of the reviewable record until Damron had the testimony transcribed as it was significant evidence which failed to become part of the designated record.

The complete transcript of testimony is included in Motion to Supplement the Record and Amend the Designation of the Record submitted to the Court of Appeals on January 24, 2002.

See Footnote [FN61] in Annotated Findings of Fact Endnotes, ***Conflicting Testimony, Credibility*** *for examples of the differences of testimony by Mary Fowler. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

except the assignment of one-half of Fred's railroad retirement benefits accrued during the parties' marriage. We further believe the trial court acted within its discretion in the award of attorney fees. **[FN5]**

[FN5] *Counsel for Appellee, Hon. W. Jeffrey Scott, represented the presiding Judge, C. David Hagerman, in his own divorce action and failed to notify Fred Damron he had such a conflict of interest. In light of such a conflict of interest, an award of attorney fees is an abuse of discretion. Copies of case history, decree, motions, cancelled checks and testimony are included at the rear of these endnotes. See [FN2]* ***Attorney W. Jeffrey Scott – Conflict of Interest*** *for supporting exhibits and testimony in the endnotes. Such impropriety must not be condoned by the Court.*

Hence, we affirm in part, reverse in part, and remand.

The parties were married on June 14, 1991, which marriage was terminated by decree of dissolution entered on May 22, 1998. The portion of that decree effecting property division was set aside by the court on June 5, 1998, and the subsequent order allocating same is the subject of this appeal. **[FN6]**

[FN6] *One of the key issues in the appeal is the fact Appellant's case has never been heard. The Lower Court* *denied Appellant any meaningful hearing on the objections to the DRC report. The Lower Court failed to review ANY of the record. The Court of Appeals refused to allow the transcript of proceedings to be designated. Even though testimony was given by all parties, it was not made part of the designated record and therefore NEVER reviewed by anyone, including the DRC, Trial Court Judge or Court of Appeals. Even after the transcript was made available, and it clearly indicates the abuses in this case by the Lower Court, the Court of Appeals refused to allow the record to be supplemented with the actual Trial Court proceedings. Appellant has a clear case, yet all in the chain refuse to allow the evidence, which is not new evidence, to be designated supporting his claims. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

In 1980, Mary purchased the marital residence for approximately $65,000, which at the time of the parties' marriage, had a mortgage balance of approximately $42,000. **[FN7]**

[FN7] *The finding of a $42,000 mortgage balance at the time of marriage was erroneous. Testimony stipulated the mortgage balance at the time of marriage was over $47,000, but less than $48,000. This was a $6,000 error. . See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC.*

The outstanding mortgage was satisfied during the course of the marriage; however, another lien was placed upon same as security for the purchase of real property on Midland Trail, which was purchased by Mary and her business partner. **[FN 8]**

[FN8] *This statement by the Court of Appeals (and DRC) is misleading. Testimony stipulated the amount borrowed to purchase the Midland Trail property was $52,500. The Midland Trail property was used for $38,500 collateral. The home of George Kimbler was used for $7,500 collateral. The home of Fred Damron and Mary Fowler was used for $7,500 collateral. Fowler indicated by testimony the balance of the security on the home was $6,000. As of March 2, 2002, the balance of collateral against the home of Fred Damron/Mary Fowler and George Kimbler is $750 on each home. See endnotes at the end of this section for supporting testimony* *and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

There was no testimony before the trial court regarding the purchase price of this latter property **[FN9]**;

[FN9] *This finding was erroneous. Testimony was provided regarding the amount of the original purchase in testimony. One hundred percent (100%) of the purchase price for the property was borrowed. The original amount was $52,500. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

however, bank records reflect that a $52,000 lien was placed on the marital residence as additional security **[FN10]**.

[FN10] *This finding was erroneous. Testimony provided the amount of the lien used as additional collateral for the purchase of the Midland Trail property was $14,000, which was split between George Kimbler's and Fred Damron/Mary Fowler's home, as $7,500 was placed on each home. Fowler gave testimony in 1998, regarding the balance on the*

Bowling Drive home, was $6,000. As of March 2, 2002, the balance of collateral against the home of Fred Damron/Mary Fowler and George Kimbler is $750 on each home. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.

Following the parties' separation in 1997, Mary conveyed her one-half interest in the Midland Trail property to Fred in exchange for his agreement to assume the monthly payments on the promissory note and mortgage attendant thereto. There is no evidence that Fred tendered any such payments **[FN11]**.

[FN11] *This finding was erroneous stating there was not any evidence that Fred Damron had paid Mary Fowler for the building and business. Testimony by all parties in all hearings stated Mary Fowler received $25,000 paid by cashier's check and Fred Damron made four monthly payments of the mortgage he assumed and held Mary Fowler harmless. After which a dispute ensued between George Kimbler (other half owner of building) and Fred Damron as Damron was paying the complete utility costs for 100% of the building. Damron testified, the Court, in a separate case,* *was aware of the matter in the dispute between Kimbler and Damron. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

Fred was served with Mary's petition for dissolution on April 3, 1998. On April 11, 1998, Fred conveyed his one-half interest in the Midland Trail property to his mother[1] **[FN12]**

[FN12] *This is a misleading statement by the Court. The building and business was purchased by Fred Damron, including the dower interest of Mary Fowler. The Court alludes the transfer appears to be improper, yet the property does not have ANY marital interest as established by testimony by both parties and by the clear language within the deed between Fred Damron and Mary Damron. Mary Damron was represented by counsel during the transfer and counsel was present during the transfer. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

---

[1] Fred's mother is a resident of Fort Gay, West Virginia.

for the consideration of $1.00 and love and affection **[FN13]**.

[FN13] *This finding is erroneous. Testimony established the transfer was for the original $25,000 loaned to Fred Damron by Hazel Damron to purchase the marital interest in the building and Boyd County Tanning from Mary Fowler and additional monies that Hazel had loaned Fred at other times. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotate Exceptions Order and Annotated DRC Notes.*

The bank, lien holder, was not notified or consulted regarding this transfer.

On July 17, 1998, Fred entered into a contract for the purchase of real property located in Lakewood Village **[FN14]**.

[FN14] *This is erroneous. Fred Damron acted as an agent for Hazel Damron to purchase the property. He and his handicapped Son, whom he now had custody, needed a place to live and his Mother, Hazel, intended to purchase a temporary place for them to live as Mary Fowler refused to allow Fred's handicapped Son to live with them. See* *endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC.*

However, this property was deeded to Fred's mother following a full cash sale **[FN15]**

[FN15] *This statement by the Court is misleading. The Court leaves the impression Fred Damron was purchasing the property but placing it in his Mother's name. This was not the case. It was made clear to Brooks Wells Realty the purchase was being made by Hazel Damron with her own funds which would require the property to be in her name. No marital funds were used. No evidence was supplied to indicate otherwise. Hazel Damron stated she had the monies and estate to make the purchase. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC.*

Nonetheless, Fred executed the settlement statements on this real estate transaction **[FN16]**.

[FN16] *This is a misleading statement by the DRC. Fred Damron was required to sign the settlement statement as he was acting as an agent for his Mother, but the inference Fred*

Damron purchased the property is erroneous as Hazel Damron testified that the purchase was with her own funds. No marital funds were used. No evidence was supplied to indicate otherwise. Hazel Damron stated she had the monies and estate to make the purchase. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC.

During the marriage, the parties acquired a 1992 Corvette and three (3) Toyota MR2 automobiles[2] **[FN17]**. [FN17] *These findings are erroneous. __First__, the Court failed to report the ownership of several vehicles, including the 1985 GMC Truck, 1981 Ford F350 dump truck, and the 1989 Chevrolet S-10 4X4 Truck. __Second__, the 1992 Corvette is not what the Petitioner normally drives. Mary began driving the Corvette, which was a Sunday pleasure vehicle, after she totaled the family Jeep Cherokee while drunk, on valium and marijuana, and leaving from dinner with Commissioner Ruth's relative, Jackie Ruth. She then sold the wrecked Jeep, in both parties' names, without Damron's knowledge for $250. It was purchased for over $27,000 and a $10,000 non-marital vehicle, belonging to Damron, was used in trade for*

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[2] There were two (2) 1986 models and one (1) 1985 model.

the Jeep. The Corvette was purchased for $27,000 with a $2,500 non-marital vehicle used in trade, which belonged to Damron. *Third**, the three (3) Toyota MR-2 vehicles were worth less than $500 each, as one was rammed by Mary Fowler with the S-10 truck and totaled, one was wrecked a year earlier, and one was purchased for $500 for parts. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

Additionally, the parties had purchased a 1993 Jeep, which was totaled in June 1997, when Mary struck a deer while traveling at night **[FN18]**.

[FN18] *The Jeep was totaled by Mary Fowler while drunk, on Valium and marijuana while leaving from dinner with Commissioner Ruth's relative, Jackie Ruth. Damron used a non-marital vehicle valued at $10,000 to trade for the vehicle. The vehicle was in both Damron and Fowler's names. After wrecking the Jeep, Fowler sold the vehicle for $250 without the knowledge or permission of Damron. Fowler claimed she hit a deer, however, there was no indication from any of the reports supporting her claim. Fowler pled guilty to DUI, had a blood alcohol level of 2.1* *and tests submitted by the police showed Valium and marijuana in her system. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

At the time of the accident, the parties only maintained liability insurance coverage on this vehicle and the lien holder subsequently obtained a $9,000 deficiency judgment. Following Mary's accident, Fred took over the operation of Boyd County Tanning, a salon owned and previously operated by Mary **[FN19]**.

[FN19] *This is a misleading statement by the Court of Appeal (and DRC) and erroneous. Mary Fowler's accident occurred on July 17, 1997, not June. Both Mary Fowler and Fred Damron operated Boyd County Tanning together from February, 1997, (Opening of Business) to July 17, 1997, the date of her driving under the influences of drugs and alcohol accident. Fowler seldom worked at the business as Damron was the primary person handling its affairs. Fowler only operated the business 15 times during the period from February to July, 1997. Damron operated the business with his Son after the date of Fowler's DUI accident. Damron* *purchased Fowler's marital and dower interest in the business and building on November 8, 1997. After that time, it no longer became a marital interest. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

Likewise, in April or May, 1998, Fred purchased Carter County Tanning **[FN20]**.

[FN20] *This statement is misleading by the Court of Appeals (and DRC). This equipment was purchased on May 1, 1998, during the separation, 21 days before the divorce was final. No marital funds were used for the purchase as the money was obtained as a loan from Hazel Damron. Mary Fowler testified that she did not have any evidence showing that marital funds were ever used for the purchase. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC.*

Additionally, Fred purchased Campus Video, a video rental store, a few days following the initial decree of dissolution **[FN21]**. By the time of trial on the property issues, Fred had failed or refused to provide any reliable documentation concerning the income or expenses of these businesses **[FN22]**.

[FN22] *This is erroneous. Any income derived from Boyd County Tanning was non-marital, as Mary Fowler's marital and dower interest had been purchased by Fred Damron on November 8, 1997. Damron provided documents of the income and expenses of the business in summarized spreadsheets and submitted to the Court as Respondent's Exhibits No. 4 and No. 5. These were created from expenses and income from the business. Most of the business records had been stolen by Mary Fowler in numerous burglaries, which were reported to authorities, and portions of these documents were made part of the testimony before the Court. Several records were submitted in Court by Fowler from these thefts, The business operated at a loss due to the high cost of utilities, as Damron was required to pay the utilities for the entire building and due to the thefts of products and merchandise by Fowler or her accomplices on several occasions. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC.*

He further testified that he did not maintain any checking or other bank accounts with respect to same, but apparently operated on a cash basis.

The record reflects the Fred had a history of providing his various employers with erroneous social security numbers for purposes of payroll records, that is, he submitted either Mary's social security number of that of his son **[FN23]**.

[FN23] *Damron was clear in his testimony there had been errors, which an investigator was retained to determine and see the corrections were instrumented, which did occur per testimony. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

Likewise, the record contains the testimony of Mason Hainsworth, the Director of Specialized Audits for Norfolk Southern Corporation, one of Fred's former employers. Mr. Hainsworth provided the court with his testimony regarding Fred's dishonest activities while a company employee, as well as his engagement in subterfuge and other forms of illegal conduct and deceit with regard to this employment **[FN24]**.

[FN24]*The inclusion of Haynesworth's testimony was an error by the Lower Court, as it had nothing to do with the property division and was objected to by Damron. Haynesworth had lost a significant case to Fred Damron and would be expected to say nothing positive. Haynesworth was used as a mudslinger in a hearing about property, which had nothing to do with misconduct. Haynesworth lost his case, using the same arguments, to a tribunal. Allowing this testimony and making any form of basis from testimony regarding credibility, is clear error. Damron testified about Haynesworth's testimony being inaccurate in the hearings, which were not provided to the Court for review. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

In its order dividing the parties' property, the court affirmed the domestic relations commissioner's (DRC's) recommendation that Mary receive the marital residence **[FN25]**.

[FN25] *This was clear error and an abuse of discretion. The mortgage was nearly $48,000 at the time of marriage and it was retired in 1994, before the divorce. Damron had a* *marital interest in this property based on the Brandenburg formula and had expended over $38,000 in improvements/remodeling and repairs to the home in addition to paying off the mortgage. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

In exchange therefore, Fred was awarded all marital interest in the Lakewood Village property **[FN26]**,

[FN26] *This is clearly erroneous as there was not any evidence whatsoever Fred Damron purchased the real estate and his executing a purchase contract is not indicative he did so. Hazel Damron testified she purchased the property with her own funds so her Son and Grandson would have a place to live. Fred Damron verified this and the deed certainly bears this out. At worse, it might be construed as a gift to Fred Damron, which would make it non-marital property. There is no evidence to the contrary and any finding Fred Damron has, or had, any interest in this property is not supported by any credible evidence. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and*

Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.

the Carter County Tanning business **[FN27]**,

[FN27] *This is clearly erroneous as there was not any evidence Fred Damron used any marital funds to purchase Carter County Tanning. Hazel Damron testified that she loaned the funds for the purchase. This purchase was made 21 days before the divorce decree order. Mary Fowler testified she had no evidence marital funds were used in the purchase. Fred Damron testified the money was borrowed from his Mother. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

and all income earned by the Boyd County Tanning business between 1997 and 1999 **[FN28]**.

[FN28] *This is clearly erroneous, as at the time of the hearing Fowler had conveyed her interest in the Boyd County Tanning business and the Midland Trail property to Damron for $25,000 plus the assumption of her portion of the mortgage on the Midland Trail property. A fact Fowler did not dispute, nor had she taken any action to set aside this* *transfer, nor make any claim she was coerced or tricked into doing so. Even though this transfer took place during the marriage, one spouse can, by agreement, convey her marital interest in property to the other spouse free and clear of any marital claims she may have. Fowler clearly accomplished this by the terms of the deed. A court has no right to terminate or change this transfer. The DRC was clearly wrong to ignore the non-marital character of the Midland Trail property and business after the conveyance to Damron and the DRC also erroneously disregarded the marital character of the property when it was purchased in 1995. After the transfer to Damron of Fowler's interest in the property and business for $25,000 plus the assumption of her portion of the mortgage, she no longer had any viable claim to the property and to characterize it as marital is clearly erroneous. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

The contents of Boyd County Tanning were, otherwise, ordered sold **[FN29]**

[FN29] *This is clearly erroneous. The Boyd County Tanning items were included in the purchase of Fowler's interest of* *the Midland Trail property, for which she received $50,000 of value. To order them sold would violate the terms of the transfer. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

with the proceeds to be applied to the bank's deficiency judgment on the Jeep **[FN30]**.

[FN30] *This is clearly erroneous. The deficiency judgment is for the 1993 Jeep Grand Cherokee, until Fowler wrecked it while drunk and under the influence of valium and marijuana, while returning from a date with Jackie Ruth, relative of the DRC. She pled guilty to DUI in the Boyd District Court. The Jeep was totaled and she sold it for $250 without the permission or knowledge of Damron. It was worth approximately $20,000 and there was a lien against it for $9,000, therefore, the equity was approximately $11,000. The vehicle was purchased for $24,000 with a non-marital asset valued at $10,000 as a trade and the balance financed by National City Bank, not Fifth Third Bank as erroneously found by the DRC. The DRC ignored this situation and allowed Fowler to profit to the tune of $18,000 from totaling a vehicle while drunk, on drugs and committing adultery with* *a married man and requiring Damron to pay for it. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

Mary was awarded her vehicle (the Corvette) while Fred was granted ownership of the three (3) MR2 automobiles **[FN31]**.

[FN50] *The DRC found the "parties own a 1992 Corvette vehicle which the petitioner normally drives" and valued the car at $18,000. However, at the time the parties' cohabitated, the vehicle was only driven occasionally. The primary vehicle Fowler drove was a 1993 Jeep Grand Cherokee, until she wrecked it while drunk and under the influence of valium and marijuana, while returning from a date with Jackie Ruth, relative of the DRC. She pled guilty to DUI in the Boyd District Court. The Jeep was totaled and she sold it for $250 without the permission or knowledge of Damron. It was worth approximately $20,000 and there was a lien against it for $9,000, therefore, the equity was approximately $11,000. The vehicle was purchased for $24,000, with a non-marital asset valued at $10,000 as a trade, and the balance financed by National City Bank, not*

Bank of Ashland as erroneously found by the DRC. The DRC ignored this situation and allowed Fowler to profit to the tune of $18,000 from totaling a vehicle while drunk, on drugs and committing adultery with a married man and requiring Damron to pay for it. To add insult to injury, Damron was awarded three (3) wrecked Toyota MR-2's valued at $500 each. Unbelievable. The DRC ignored three (3) other vehicles in Fowler's possession. A 1989 Chevrolet S-10 4X4 worth $2,500. A 1985 GMC 1-1/2 ton truck with utility body worth $5,000 and a 1981 Ford F350 dump truck worth $3,500. The DRC also ignored the non-marital vehicles used in trade to the Corvette (Chevrolet S-10, worth $2,500) and in trade to the Jeep Grand Cherokee (Chevrolet S-10 Blazer, worth $10,000). This was clearly erroneous. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.

Mary was awarded all personal items in her possession with the exception of those, which Fred specifically requested **[FN32]**.

[FN32] *The DRC only mentioned a few items of personal property purchased during the marriage... "a treadmill and* *living room suite in Fowler's possession, a John Deere riding mower in Damron's possession; and the inventory of Boyd County Tanning (4) four tanning beds, computer plus accessories, display cases and eight (8) chairs, and additional miscellaneous items." The DRC was provided with an EXTENSIVE LIST of valuable property in Fowler's possession, which includes appliances and other property. Apparently, the DRC intends Fowler be allowed to keep these marital items without accounting for them. This situation is patently unfair, not a just allocation of property and clearly erroneous. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

Additionally, Fred was assigned responsibility for the lien, which was placed upon the marital residence at the time the Midland Trail property was purchased **[FN33]**.

[FN33] *This ruling is erroneous. Damron held harmless Fowler in the transfer of property at Midland Trail and assumed the portion of the mortgage, which was Fowler's responsibility. Damron is only responsible for one-half of* *this debt as George Kimbler also owns half of the building and therefore, Damron cannot be made responsible for 100% of the debt. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

The DRC further recommended that Mary be awarded one-half (1/2) of the railroad pension funds Fred accumulated during the marriage **[FN34]**

[FN34] *This was clearly erroneous. The Court of Appeals reversed this portion of the DRC order and took the position that only Tier II benefits of Railroad Retirement can be awarded. Damron takes the position it is not subject to distribution and in light of the fact Fowler received over $200,000 as a marital award and Damron received NEGATIVE -$10,000 (Less than nothing), this was a clear abuse of discretion. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

and $1,000 in attorney fees **[FN35]**.

[FN35] *Counsel for Petitioner, Hon. W. Jeffrey Scott, represented the presiding Judge, C. David Hagerman in his own divorce action and failed to notify Fred Damron he had such a conflict of interest. In light of such a conflict of interest, an award of attorney fees is an abuse of discretion. Copies of case history, decree, motions, cancelled checks and testimony are included at the rear of the endnotes. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

This appeal ensued.

Before this Court, Fred contends that all of the above-identified findings of the court are clearly erroneous. Specifically, he argues that the trial court erred in the division of real property, personal property, and marital debt; that is, he claims Mary received all of the marital assets, whereas he was assigned the associated debt absent any personal property. First, we note that as an appellate court, under CR 52.01, our review of the trial court's decision is restricted to only reversing clearly erroneous findings **[FN36]**,

[FN36] *It was clear the findings were erroneous. The DRC NEVER reviewed the record. The Lower Court NEVER reviewed the record. The Court of Appeals never reviewed the record. The RECORD does not support the findings. The RECORD is opposite to the findings. In some instances there is NO EVIDENCE to support the findings at all, which is clearly erroneous. The RECORD before the Court of Appeals presents a distorted view. The Court of Appeals denied Appellant the inclusion of over SIX (6) HOURS of testimony in all hearings. The Lower Court denied the Appellant any meaningful hearing on the objections of the DRC report. The Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes CLEARLY demonstrate that the DRC, Lower Court and Court of Appeals failed to review and consider the entire record in this case. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

keeping in mind that the Trial Court is in the best position to view the evidence and witnesses as to judge the credibility of same. Chalupa v. Chalupa, Ky. App., 830 S.W.2d 391 (1992) **[FN37]**.

[FN37] *The Court refers to* ***Chalupa v. Chalupa****, 830 S.W. 2d 391 Ky. App. (1992) as the matter of law for witness credibility in this case. The Appellant agrees to the matter of law in credibility, but it has no basis and does not apply to this case. Such a rule of law is improper to apply to KRS 403.190, which is clearly upheld by case law. This is such a case that the referenced case does not apply before the court when the division is a matter of "concrete tangible" items that can be touched, held, used, and is part of the entire personal property, subject first to separation as marital or non-marital, and then the division of the marital property in just proportions without regard to conduct.*

This case speaks loudly of the lack of fundamental fairness that was supplied to the Appellant from the courts. KRS 403.190 requires "the court shall assign each spouse's property to him. It also shall divide the marital property without regard to ***marital misconduct in just proportions****" (emphasis added) and in* ***Goodaker v Littell****, 314 S.W. 2d 539, Ky. (1958) "the trial judge was confronted with conflicting and untrustworthy evidence, his conclusion" according to the Court of Appeals "was so reasonable that* *the Court of Appeals could not set it aside". A review of the record demonstrates that the award to the Appellee could not be considered reasonable regardless of the condition. The lower Courts order was patently unfair which resulted in an unjust enrichment of the Appellee at the Appellant's expense as clearly defined in* ***Bogan v Finn****, 298 S.W. 2d 311 Ky. (1957) "claimant must not only show that the other party has received benefit but that it has been at claimant's expense". Such unjust proportions awarded based on erroneous findings of fact have resulted in an unjust enrichment by Appellee.*

The evidence clearly demonstrated to the court that the Appellee interfered with the Damron family in every manner possible, from theft, attempted shootings, burglary, harassment, breaking windows, drug and alcohol abuse, perjury, damaging vehicles, destroying marital property, dissipating marital assets and attempting to defraud the elderly of over $100,000. This was the clear evidence provided in the DRC hearing, none of which is referenced by the DRC. Obviously a Saint must be protected rather than accused with actual evidence.

***Dowell v Dowell**, 490 S.W. 2d 478 Ky. (1973) states that "fault is not a consideration in the division of marital property, and a trial judge who considers marital misconduct in distributing marital property must re-evaluate the distribution". "The legislative mandate to divide marital property in accordance with standards set out in the statue is binding upon the courts and presumptions in making such division should not be indulged in at all" **Herron v Herron**, 573 S.W. 2d 342 Ky. (1978), referring to KRS 403.190. The DRC and lower Court indulged heavily with regard to property division to a patently unfair standard. The lower Court denied the requests of the Appellant through objections and request of hearings on the same thereby failing to provide the Appellant factual findings. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

In the matter sub judice, the trial court made clear that it took Mr. Hainsworth's testimony into account in making its findings. As discussed, supra, Mr. Hainsworth testified regarding Fred's lack of honesty, use of deception, and illegal conduct while in the employ of Norfolk Southern Corporation **[FN38]**.

[FN38]*The inclusion of Haynesworth's testimony was an error by the Lower Court, as it had nothing to do with the property division and was objected to by Damron. Haynesworth had lost a significant case to Fred Damron and would be expected to say nothing positive. Haynesworth was used as a mudslinger in a hearing about property, which had nothing to do with misconduct. Haynesworth lost his case, using the same arguments, to a tribunal. Haynesworth was attempting to retry his case, to the detriment of Appellant in his divorce, which was* *res judicata**. Allowing this testimony and making any form of basis from testimony regarding credibility, is clear error. Damron testified about Haynesworth's testimony being inaccurate in the hearings, which were not provided to the Court for review. Haynesworth was used merely for character assignation with false accusations and statements that were not upheld in a tribunal. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

Similarly, as noted by the court and reflected by the record, Fred failed or refused to provide any records or other documentation regarding his business transactions and the funds used to finance his various businesses and/or other financial ventures **[FN39]**.

[FN39] *This is erroneous. Damron provided documents of the income and expenses of the business in summarized spreadsheets and submitted to the Court as Respondent's Exhibits No. 4 and No. 5. These were created from expenses and income from the business. Most of the business records had been stolen by Mary Fowler in numerous burglaries, which were reported to authorities, and portions of these documents were made part of the testimony before the Court. Several records were submitted in Court by Fowler from these thefts. The business operated at a loss due to the high cost of utilities, as Damron was required to pay the utilities for the entire building, orchestrated by Fowler, and due to the thefts of products and merchandise by Fowler or her accomplices on several occasions. Any income derived from Boyd County Tanning was non-marital, as Mary Fowler's marital and dower interest had been purchased by Fred Damron on November 8, 1997. Any income derived from Carter County Tanning was also non-marital as it was purchased with non-marital funds, after separation, and 21* *days prior to the divorce. See the endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

[FN40], [FN41], [FN42] Left as Place Holder

Further, during his deposition, Fred repeatedly refused to answer any questions regarding his finances, businesses, business employees, and the like **[FN42]**

[FN42] *Such a position and opinion by the Court of Appeals could not be maintained by reviewing the entire record. While Appellant was guarded in the deposition, it appears to have been warranted given the conflict of interest found by the DRC, Appellee's attorney and Lower Court Judge. The Court of Appeals is reviewing a record before them that presents a distorted view. Appellant supplied the Court information as requested in all hearings. The Court of Appeals is showing a clear bias in their opinion primarily because they FAILED TO ALLOW THE RECORD TO BE SUPPLEMENTED with the entire record that reflected the Trial Court proceedings. Such comments clearly supports Appellant's position that he was not afforded a meaningful* *hearing on the objections and prevented from submitting his case for review. A clear appeal COULD NOT be obtained with the current record. See the endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

while all along claiming there were no records pertaining to such information **[FN43]**.

[FN43] *__First__, the Appellant was removed from his home, site of most records, by fraudulent testimony from the Daughter of Appellee and Appellee. Appellant learned later that this was a form of legal positioning by the Appellee. __Second__, there were numerous thefts and burglaries of most of the remaining records, and the Appellee even submitted several of these records she had stolen in Court. __Third__, the Appellant reconstructed as much of the information as possible, but it was clear that the Appellee never intended to allow this original information to be submitted and then could claim to the Court that Appellant appeared uncooperative. The crimes by the Appellee against the Appellant WERE PROFITABLE. So profitable the Appellee was awarded nearly EVERY SINGLE ASSET and the*

MARITAL DEBT TO APPELLANT. THEN AWARDS TO THE APPELLEE WERE OFFSET WITH PROPERTY AND ASSETS THAT NEITHER EVER OWNED. See the endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.

Therefore, it is our opinion the Court acted within its discretion by questioning Fred's veracity with respect to any sums of money in his possession, incomes available to him, and property actually owned by him, albeit titled in either his mother's or another's name **[FN44]**.

[FN44] *Upholding the DRC report supports a position of believing a lying, adulterous, drug using woman with a significant criminal history, who gave several different stories and answers under sworn testimony, than Appellant. Appellee even admitted under oath the theft of Appellant's records. This is clear gender-bias and prejudice by the DRC. It further demonstrates the significance of the conflicts of interest noted on the DRC, Appellee's Attorney and Lower Court Judge and an unwarranted and unjustified bias and prejudice against Appellant. See the endnotes at the end of this section for supporting testimony and exhibits. See also* *the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

Even if Fred's testimony were clear and uncontroverted, and it was neither, the court was not compelled to believe it. As such, the court's findings cannot be deemed clearly erroneous **[FN45]**.

[FN45] *This is a clear abuse of discretion by the Court to uphold such a clearly erroneous position and report by the DRC. The findings by the DRC and the Lower Court are not supported by the record. THE COMPLETE RECORD. The current record presents a distorted view. A complete injustice has occurred by (1) Failing to have a meaningful hearing on the objections to the DRC report; (2) Failing to properly designate the record; (3) Failing to allow the record to be supplemented and the designation amended to reflect the TRUE Trial Court proceedings. THE DRC FINDINGS ARE CLEARLY ERRONEOUS and Appellant has demonstrated this by the Annotations of all documents by the Courts, which the Court of Appeals has NEVER reviewed. Simply reading the Annotated Findings of Fact by the DRC show how SIGNIFICANT AND CLEAR THE ERRORS ARE.*

Ignoring this information has resulted in a substantial, uncontroverted injustice to Appellant. See the endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.

Rather, since the Court discerned the credibility of the witnesses and made its judgment according thereto, we will not disturb its ruling. CR 52.01. **[FN46]**

[FN46] *There is nothing indicating that the Lower Court or the DRC "discerned the credibility of the witnesses". Had the Court done so, such an injustice would not have been allowed to occur. What is clearly apparent from the record is the Court became biased and prejudiced with the inclusion of false testimony that had nothing to do with the division of property. The report by the DRC clearly violated KRS 403.190. Even CR 52.01 was violated where an "appropriate judgment" was not rendered by the Court. The only true course that the Courts can take is to FULLY REMAND this case as the Appellant was denied any meaningful hearing on the objections to the DRC report. Appellant has been denied his due process rights from the onset of this case. The record has NEVER been reviewed. See the endnotes at the end of* *this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

Similarly, Fred contends the Court erred in awarding Mary $1,000.00 in attorney fees. We disagree **[FN47]**.

[FN47] *Not only did the DRC and Lower Court err. IT WAS AN ABUSE OF DISCRETION. The Court of Appeals has taken an UNJUSTIFIABLE position. It was also a conflict of interest for the Judge to award fees to an attorney he was using privately at the same time. See the endnotes at the end of this section for supporting testimony and exhibits. _ See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

In tandem with our above discussion regarding Fred's lack of candor with the court **[FN48]**,

[FN48] *This is another clear example of prejudice and bias by the Court. Such bias and prejudice was developed by failing to have the complete record for review. It is apparent from such statements the Appellant could not make a clear appeal with a distorted record. See the endnotes at the end of* *this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

the record reflects that Mary had remain unemployed since receiving bodily injuries in the aforementioned automobile accident **[FN49]**.

[FN49] *Mary Fowler hoped that the Court would believe that she was unemployed. There was nothing before the Court to support that she could not work other than her wild claims, which cannot be believed. Fowler testified that she did not make any attempt to find work, and had not pursued any form of public assistance nor was she medicated to keep her from working. Mary Fowler stated "I have always owned my own business" as her excuse for not working. This was just more legal positioning to attempt to rob the Appellant of an "equitable distribution" of the marital assets. A review of Mary Fowler's conflicting testimony demonstrates the "lack of candor" she had before the Court. Since it was not reviewed, the bias was placed against Appellant. See the endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated*

Likewise, it was Mary's testimony that she had no access to any cash resources but was sustaining her livelihood off the charity of friends and family **[FN50]**.

[FN50] *By Appellee's own testimony IN THE RECORD, she received $31,730 IN CASH, IN ADDITION TO loans from George Kimbler, Jackie Ruth (Relative of DRC) and her Twelve (12) brothers and sisters AND selling marital assets for unknown values. THE RECORD also stipulated that the family home and vehicles were DEBT FREE. This leaves the Appellee with only expenses for utilities and food. The Court CANNOT seriously justify a position that Appellee did not have access to SIGNIFICANT CASH RESOURCES. This does not include the cash resources not in the record or reported by Fowler, which are also significant. Mary Fowler also had access to cash resources she had stolen it from Appellant as documented in the burglaries and thefts made a part of the record. Appellee even gave testimony that she had been selling the marital assets, which was ignored by the Lower Court and DRC. Further, Appellee did not give the Court ANY reason to believe that she was not earning money in some capacity. See the endnotes at the end of this section* *for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

Again, we believe the court exercised sound discretion in making an award of attorney fees and will not alter that decision. KRS 403.220; CR 52.01. **[FN51]**

[FN51] *Based upon the facts within the record; One, Appellee could have worked but chose not to because she has "always owned her own business"; Two, Appellee did have access to over $31,000 in CASH documented to the Court by her own testimony; This is an unconscionable position and an abuse of discretion by the Court. The only "sound discretion" exercised by the Court was showing how the Conflict of Interest, and failure to report such, profited the Appellee. Such "sound discretion" is not supported by the record. See the endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

The sole remaining issue raised by Fred in this appeal remains the court's allocation of fifty-percent (50%) of those sums accumulated in his railroad retirement account during the time of the parties' marriage. On this point Fred argues that this Court's holding in Elkins v. Elkins, Ky. App., 854 S.W.2d 787 (1993), controls in that Elkins states that railroad retirement benefits are non-assignable pursuant to 45 U.S.C. § 231m(a). However, we believe that application of Elkins is limited to the qualifications identified in 45 U.S.C. § 231m(b)(2) which prohibit equitable distribution of railroad retirement benefits computed under 45 U.S.C. §§ 231b(a), 231c(a) or (f)[3].

In March 1987, the Railroad Retirement Board established regulations under 20 C.F.R. § 295.1 et seq. setting forth a procedure by which the Board would recognize and honor a court decree or property settlement involving benefits subject to equitable distribution under 45 U.S.C. § 231m(b)(2). In its regulations the Board specifically enumerates those benefits subject to 45 U.S.C. § 231m(b)(2)'s characterization as property which may be divided upon dissolution as follows:

> (b) Benefits subject to this part. Only the following benefits or portions of benefits under the Railroad Retirement Act are subject to this part:

---

[3] The benefits addressed in Elkins were exempt from distribution in that such were disability benefits.

(1) Employee annuity net tier II benefits component as provided under section 3(b) [45 U.S.C. § 231b(b)] of the Railroad Retirement Act;

(2) Employee annuity vest dual benefit component as provided under section 3(h) [45 U.S.C. § 231b(h)] of the Act;

(3) Employee annuity net proportionate share of the annuity increases as provided under section 3(f) [45 U.S.C. § 231b(f)] of the Act; and

(4) Supplemental annuities as provided under section 2(b) [45 U.S.C. § 231m(b)] of the Act.

Here, the court did not characterize the nature of Fred's railroad retirement benefits. As such, we reverse that portion of the Court's judgment and remand this matter for a determination of whether the benefits in issue are subject to division in accordance with 45 U.S.C. § 231m(b)(2). **[FN52]**

[FN52] *Based on the fact of Appellee is receiving over $200,000 in an award and the Appellant received less than nothing (-$10,000), a further award to the Appellee of the*

Appellant's retirement benefits, for a marriage of less than 7 years, is an abuse of discretion and totally unjustified. The Court of Appeals reversed this portion of the DRC and takes the position that only Tier II benefits of Railroad Retirement can be awarded. Appellant takes the position it is not subject to distribution and in light of the fact Appellee received over $200,000 as a marital award and Appellant received NEGATIVE -$10,000 (Less than Nothing), this was a clear abuse of discretion. Any further award to Appellee continues to abuse the Appellant EXTENSIVELY. See the endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.

Based on the foregoing discussion, the judgment of the Boyd Circuit Court is affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

BRIEF FOR APPELLEE:

Rodney S. Justice
W. Jeffrey Scott

Ashland, Kentucky
Grayson, Kentucky

[FN53] *This case must be FULLY REMANDED, the orders vacated, and the Appellant is entitled to a meaningful hearing on the objections to the DRC report by an unbiased Court without a conflict of interest. See the endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.*

[FN54] **Conflicting Testimony, Credibility**

During all testimony taken from Mary Fowler her testimony differed in most all instances as she could not keep her stories straight. This clearly demonstrates that Mary Fowler lacks any credibility as a witness and is not telling the truth to the Court. During the depositions and hearings Mary Fowler was asked the same questions, about the same subjects, and gave completely different answers. The following demonstrates her changes in testimony and makes ALL of her testimony far from believable. Mary Fowler attempted to have the Court believe all remodeling/improvements/repairs on the family home, for 7 years, was completed by HomeTech in most instances, which *was not the case. Even if this was true, which it wasn't, it would be considered marital.*

DRC Ruth failed to recognize that Mary Fowler's testimony differed during each time she gave testimony to the Court. This lends great weight that her testimony was not the truth at all. In three instances Fowler was questioned regarding the improvements/remodeling performed on the Bowling Drive home. A review of this testimony clearly shows the testimony given to the Court changes at each instance testimony is given. All testimony by Fowler is suspect.

APPENDIX D1

COMMONWEALTH OF KENTUCKY

COURT OF APPEALS

FOOTNOTES FOR OPINION NOVEMBER 2, 2001

FOOTNOTES

For Writ of Certiorari to the United States Supreme Court

Appeal from Boyd Circuit Court
Hon. C. David Hagerman, Judge
Action No. 98-CI-00326
Court of Appeals No. 2000-CA-002406-MR
Kentucky Supreme Court No. 2002-SC-157-D

ENDNOTES

ANNOTATED OPINION

LEGEND:
Damron: Frederick Cecil Damron
Respondent, Appellant, Movant
Petitioner for Writ of Certiorari
Fowler: Mary Gail (Damron) Fowler
Petitioner,Appellee,Respondent
Respondent for Writ of Certiorari
Hagerman: C. David Hagerman
Presiding Lower Court Judge, Conflict of Interest, Recused October 2002
Haynesw: Mayson Haynesworth
Witness
Hdamron: Hazel B. Damron
Witness
Howe: Thomas M. Howe
DRC, First, Recused, Conflict of Interest
Justice: Rodney S. Justice
Attorney for Frederick Cecil Damron
Lloyd: Russell Lloyd
Attorney for Ginger Hagerman, former wife of C. David Hagerman
Ruth: Anna H. Ruth
DRC, Second, Conflict of Interest
Scott: W. Jeffrey Scott
Attorney for Judge C. David Hagerman and
Mary Fowler, Conflict of Interest, withdrawn from case in October 2002

[FN1]
Trial Court Failed to Hold a Meaningful Hearing on Objections. Designated Record before the Court of Appeals is Deficient and Presents a Distorted View.

Courts Failed to Allow Record to be Supplemented as Required.

This is clearly erroneous. First, the Trial Court failed to hold a meaningful hearing on objections. Second, the record is deficient and presents a distorted view. Over six (6) hours of testimony are missing from the designated record, which is the primary case of Damron. A clear appeal cannot, and could not, be obtained, with the current record. Third, the Courts failed to allow the record to be supplemented. Damron made motions to include the entire transcript of all hearings, which were denied. Annotations of this Opinion, the DRC Recommendations and Order, the Exceptions Order and the DRC Notes have been made with the testimony from these transcripts. Review of these annotations shows how clearly erroneous, misguided, unsupported, unjust, gender biased and prejudiced the rulings are on this case. This is based on the actual Trial Court proceedings. The record before the Court of Appeals does not reflect the Trial Court proceedings and prevented Appellant a method of clear appeal. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC and the Annotated Exceptions Order.

[FN2]

Laws, Statutes, Procedures, Constitution not Followed in this Case

Numerous statutes, laws, codes and the U.S. Constitution were violated in this case in the handing down of orders from the DRC to the Court of Appeals. These have been, and are being, brought to the attention of the Courts. Damron has been denied his right to due process in having the evidence in his case heard. Damron has also been denied due process with the failure of the Lower Court to hold any meaningful hearings on the objections to the DRC report. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.

Several of the most significant violations of statutes, laws, codes and The Constitution are listed below:

1. CR 53.06(2) Action of Report (Lower Court)

Trial Court - Failure to Hold a Meaningful Hearing on Objections

Citing Kelley v. Fedde, Ky. 64 S.W. 3d 812 (2002) Respondent (Damron) first asserts that the trial court erred in denying him a meaningful hearing on his objections to the DRC's report.

CR 53.06(2) Action on Report provides as follows:

Except in pendente lite matters, within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. **Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice** as prescribed in CR 6.04. The court **after hearing** may adopt the report, or may modify it, or may reject it in whole or in part, or may receive further evidence, or may recommit it with instructions.

(Emphasis added)

Respondent (Damron) made a timely objection to the DRC's report and was entitled to a hearing on those objections pursuant to CR 53.06(2). As noted in Haley v. Haley, Ky. App., 573 S.W.2d 354 (1978), while a full-blown evidentiary hearing is not contemplated by the rule, the parties must be afforded an opportunity for oral argument. At motion hour on September 6, 2000, objections were overruled without ANY REVIEW of the case, transcripts or having a hearing where oral argument could be presented. Motion hour by Judge C. David Hagerman is not transcribed, recorded, and his secretary/court reporter, Peggy Arthur on April 12, 2002, informed Respondent (Damron) no records or transcripts existed of any discussions at motion hours as it was primarily used for scheduling purposes by the Court.

Fowler has taken the position that there was a "hearing of sorts", referring to motion hour. This WAS NOT the case. Damron was not afforded **any meaningful hearing.** Had the case been afforded a hearing, it would have been apparent that the report filed by the DRC was clearly erroneous and not supported by the testimony of the hearings as demonstrated in the Annotated Opinion, Annotated Findings of Fact, Annotated Exceptions Order and Annotated DRC Notes.

2. CR 75.08 (Court of Appeals)
Failure to Allow Record to be Supplemented with Missing Six (6) Hours of Testimony

CR 75.08 states, "if any difference arises as to whether the record truly discloses what occurred in the Trial Court, the difference shall be submitted to and settled by the Court and the record made to conform to the truth". This rule further states "the Appellate Court, on proper suggestion or of its own initiative, may direct an omission or misstatement shall be corrected, and if necessary a supplemental record shall be certified and transmitted by the clerk of the Trial Court". **First Nat. Bank of Louisville v First Nat. Bank, Prestonsburg**, 567 S.W. 2d 316 Ky. App. (1978), supports the fact the record can be corrected "by adding of materials or correction of language which arose at trial".

Failure to allow Appellant to supplement the record with the missing hearing testimony prevents the Appellant his right to establish error and prevents him his submission of the burden of proof. The "case must be tried on appeal in Court of Appeals on record as it was presented to the Trial Court"

Fortney v Elliott's Adm'r., 273 S.W. 2d 51 Ky. (1954). The current designated record presents a distorted view and a clear appeal cannot be obtained. The record is not reflective of the Trial Court proceedings.

It was improper by the Court of Appeal to deny Appellant's motion to supplement and amend the designation of the record.

3. U.S.C.A. Const. Amendment 14, (Lower Court, Court of Appeals)

Right to Due Process

Damron has been deprived of the Due Process Clause of the 14th Amendment of the U.S. Constitution which requires a state provide a person with a fair opportunity to be heard before the state can deprive him of a "life, liberty or property" right **U.S.C.A. Const. Amend. 14**. **Bentley v. Aero Energy, Inc.**, 903 S.W.2d 912 Ky. App. (1995), stated the "Requisites of due process focus upon appraisal and evaluation of evidence supplied decision-maker" and in this case Appellant had been denied the ability to have his evidence supplied to the Trial Court or Court of Appeals so it is reviewable for rendering decisions.

4. KRS 403.190, (DRC, Lower Court, Court of Appeals)

Division of Property

This case speaks loudly of the lack of fundamental fairness that was supplied to the Appellant from the courts. KRS 403.190 requires "the court shall assign each spouse's property to him. It also shall divide the marital property without regard to **marital misconduct in just proportions**" (emphasis added)

Dowell v Dowell, 490 S.W. 2d 478 Ky. (1973) states that "fault is not a consideration in the division of marital property, and a trial judge who considers marital misconduct in distributing marital property must re-evaluate the distribution". "The legislative mandate to divide marital property in accordance with standards set out in the statue is binding upon the courts and presumptions in making such division should not be indulged in at all" **Herron v Herron**, 573 S.W. 2d 342 Ky. (1978), referring to KRS 403.190. The DRC and Lower Court indulged heavily with regard to property division to a patently unfair standard. The Lower Court denied the requests of the Appellant through objections and request of hearings on the same thereby failing to provide the Appellant factual findings.

The DRC made no attempt in the findings of fact to separate ANY property as marital or non-marital, which is the first requirement of KRS 403.190 with the exception of the actual marital asset of the Bowling Drive marital home, deemed as non-marital. "In a marriage dissolution action, non-marital property must first be separated from marital property" **Hollon v Hollan**, 623 S.W. 2d 898 Ky. (1981). If there was any confusion as to the true nature of property this is covered in **Hoffman v Hoffman**, 553 S.W. 2d 474 Ky. App. (1977) where the "divided property was in such a state of confusion that further taking of proof would be necessary to determine proper division of parties' property". The Lower Court failed to adequately separate property and further failed to allow any issue to be clarified denying Appellant procedural due process.

5. CR 52.01 (DRC, Lower Court, Court of Appeals) Render Appropriate Judgment

The Court of Appeals states in their opinion, "first, we note that as an appellate court, under CR 52.01, our review of the trial court's decision is restricted to only reversing clearly erroneous findings" CR 52.01 ALSO requires the Courts to "render appropriate judgment" to cases. This did not occur by the DRC or Lower Court and the Court of Appeals merely rubberstamped a gross injustice WHICH WAS NOT AN APPROPRIATE JUDGMENT. The positions of the DRC, Lower Court and Court of Appeals cannot be justified with review of the complete evidence and an accurate record that "accurately reflects the Trial Court proceedings".

6. Unjust Enrichment (DRC, Lower Court)

Bodie v Bodie, 590 S.W. 2d 895 Ky. App. (1979) states that "there is no statutory presumption that all debts incurred during marriage are marital debts" and the Appellee has been unjustly enriched in this case. Failure to consider this impact was clearly erroneous and unjust in consideration of division of assets.

7. Equal Protection under the Law (DRC, Lower Court)

It is clear from the review of the Annotated Findings of Fact, Annotated Exceptions Order and Annotated Opinion that Damron was not afforded "equal protection under the law" and the award by the DRC is gender biased and prejudiced. The award and findings by the DRC are not "supported by evidence" at all.

8. Abuse of Discretion (DRC. Lower Court)

The abuse of discretion by the Courts is very apparent. Even a child could review the Annotations and see that ABUSE is prevalent throughout the rulings and findings. See [FN3] for further discussion of this issue.

9. Failure to Report Conflicts of Interest (DRC, Lower Court)

The Supreme Court of Kentucky and the Kentucky Bar Association have adopted the Judicial Codes of Conduct and the Rules of Ethics. Both were grossly violated by Ruth, Scott and Hagerman in this case. See below:

DRC Anna H. Ruth

Her relative was dating Fowler at the time of hearings and rulings

W. Jeffrey Scott

He was awarded attorney fees by Judge C. David Hagerman while at the same time represented the Judge in his own divorce. Scott failed to inform Damron of this conflict of interest.

Judge C. David Hagerman

He was using W. Jeffrey Scott as his own personal attorney in divorce. He awarded attorney fees to Scott. Chief Judge C. David Hagerman appointed Anna H. Ruth to her position as DRC. DRC Ruth's husband, Paul, is the insurance agent for Hagerman. Hagerman and Ruth have been neighbors (two houses from each other) for several years, until Hagerman recently sold his home.

Supporting testimony & exhibits for all of the conflicts of interest are found to be as follows:

DRC Anna H. Ruth – Conflict of Interest

DRC Commissioner, Anna H. Ruth, failed to inform the Court of her conflict of interest as the Petitioner, Mary Damron Fowler, was romantically involved with the Commissioner's relative, Jackie Ruth, during the divorce proceedings. See the following supporting testimony.

Page 47 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Did you put gas in that car?

Fowler: No, I didn't. My boyfriend did last night.

Justice: Who is your boyfriend?

Fowler: Just a friend from out of town. **Jackie Ruth**.

Page 23 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Scott: Then you want some distribution of the household furniture and furnishings?

Damron: That's correct. I want to make sure that the $10,000 that's on the – owed on the Jeep is paid off. I don't feel that I should be made responsible for that 'cause, you know, I wasn't going to dinner and drugging and drinking with **Jackie Ruth** and then tearing up the vehicle.

Chief Judge C. David Hagerman – Conflict of Interest, Using Petitioner's Attorney

Counsel for Petitioner, Hon. W. Jeffrey Scott, represented the presiding Judge, C. David Hagerman, in his own divorce action and failed to notify Fred Damron he had such a conflict of interest. C. David Hagerman is also Chief Judge for Boyd County. He appointed Anna Ruth as DRC. Her current husband, Paul, is the insurance agent for C. David Hagerman. Until recently, Anna Ruth and C. David Hagerman were long-time neighbors, living two houses apart. Copies of case history, decree, motions, cancelled checks and testimony are included at the rear of the endnotes. This case is now before the Kentucky Supreme Court. These documents are as follows:

1. Case History, *Hagerman vs. Hagerman 2000-CA-002880-MR*
2. Decree, *Hagerman vs. Hagerman 2000-CA-002880-MR*
3. Motion, *Hagerman vs. Hagerman 2000-CA-002880-MR*

4. Check, *Hagerman vs. Hagerman* *2000-CA-002880-MR*

Hagerman vs. Hagerman 2000-CA-002880-MR aka Carter County Case # 98-CI-00211. Case was filed in Carter County, Kentucky, on July 7, 1999. Counsel of Record is W. Jeffrey Scott **(Case History, Decree, Motion)**

Hagerman vs. Hagerman 2000-CA-002880-MR aka Carter County Case # 98-CI-00211. Cancelled Check is included in the rear of the endnotes and written to W. Jeffrey Scott from C. David Hagerman **(Check).** Case testimony by C. David Hagerman was as follows as taken from transcript of testimony **(Testimony)**, Russell Lloyd attorney for Ginger Hagerman, W. Jeffrey Scott attorney for C. David Hagerman, and C. David Hagerman:

Page 192 *David Hagerman Testimony, Hagerman v. Hagerman, June 13, 2000*

Lloyd: Just briefly, how much have you paid your lawyer?

Scott: Not near enough. I can tell you that.

Hagerman: Not near what you are trying to get. I paid Jeff up to this point – I believe I paid him about a thousand, and I owe him about $1200 more prior to today. So probably by the time I get through with the whole thing Jeff's fee will be between probably close to $3000 when – is that pretty close?

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Scott: I don't know

Hagerman: Don't claim you don't know.

Lloyd: He's not under oath.

Hagerman: I've paid him about a thousand, and the last statement I got I owe him about $1200, and that was not inclusive of today's festivities.

Attorney W. Jeffrey Scott – Conflict of Interest.
Counsel for Appellee, Hon. W. Jeffrey Scott, represented the presiding Judge, C. David Hagerman, in his own divorce action and failed to notify Fred Damron he had such a conflict of interest. In light of such a conflict of interest, an award of attorney fees was an abuse of discretion, which is one of the objections by Damron. Judge C. David Hagerman failed to allow any meaningful hearing on the objections. Copies of case history, decree, motions, cancelled checks and testimony are included at the rear of these footnotes. See **Chief Judge C. David Hagerman – Conflict of Interest, Using Petitioner's Attorney** in the previous section of [FN2]

10. Abuse of Chalupa v. Chalupa, 830 S.W. 2d 391 Ky. App. (1992)

The Court of Appeals stated in reference to review "keeping in mind that the trial court is in the best position to view the evidence and witnesses as to judge the credibility of same. Chalupa v. Chalupa, Ky. App., 830 S.W.2d 391 (1992)". The Court of Appeals improperly applied **Chalupa v. Chalupa**, 803 S.W. 2d 391 Ky. App. (1992) as a rule of law for credibility as it is not proper to apply to KRS 403.190 which requires division of property "in just proportions" without consideration of marital misconduct which is upheld by numerous cases in Kentucky.

The Court refers to **Chalupa v. Chalupa**, 830 S.W. 2d 391 Ky. App. (1992) as the matter of law for witness credibility in this case. The Appellant agrees to the matter of law in credibility, but it has no basis and does not apply to this case. Such a rule of law is improper to apply to KRS 403.190, which is clearly upheld by case law. This is such a case that the referenced case does not apply before the Court when the division is a matter of "concrete tangible" items that can be touched, held, used, and is part of the entire personal property, subject first to separation as marital or non-marital, and then the division of the marital property in just proportions without regard to conduct.

11. Other Areas

Properly addressing the first ten (10) areas will also address the remaining areas.

[FN3] **Courts ABUSED their Discretion**

Nothing could be further from the truth. The Court DID ABUSE their discretion. First, the presiding Judge was represented by the same attorney as Appellee (Fowler), and awarded fees by the Judge, is an abuse in itself. Second, the DRC and Lower Court failed to follow the laws and statutes governing this matter is also an abuse of discretion (See FN2). Third, the Lower Court failed to hold any meaningful hearing on the objections to the DRC report as required in CR 53.06(2). Fourth, marital and non-marital property were not separated. Fifth, the DRC offset property awards to the Appellee with property that was not owned by EITHER party. Sixth, the DRC misstated financial values to the detriment of Appellant as shown by the TRUE record. Seventh, the DRC failed to report a substantial amount of the marital assets in the Appelle's possession, which resulted in unjust enrichment. Eighth, the DRC and Lower Court failed to apply equal protection to Appellant under the law. To state that the Trial Court did not abuse its discretion heavily overlooks the outrageous awards which amount to the Appelle receiving over $200,000 and the Appellant receiving NEGATIVE -$10,000, which is less than nothing. The DRC has even attempted to justify her award with an offset of property that was not owned by either party. Simply put, if the Court wishes to punish the Appellant, that forum would be with criminal charges and not hiding behind the "discretion of the court" rule to take everything a party has without due process of law. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.

[FN4] **Clear Error by the Court according to the Complete Record**
This is an erroneous finding. The DRC Recommendations and Order are not supported by testimony, even by the Appellee and her witnesses. Some findings are not supported by any evidence, therefore clearly erroneous. Simply reviewing the true record reveals the DRC Findings of Fact, Report and Recommendations by DRC to be almost 100% CLEAR ERROR. Most of the facts were ignored or misstated by the DRC to the detriment of the Appellant. The Annotated Opinion, Annotated Finding of Fact, Report and Recommendations by DRC, Annotated Exception Order and Annotated DRC Notes CLEARLY show that the majority of the report was erroneous. It was also CLEAR ERROR by the Lower Court to deny the Appellant a meaningful hearing on the objections to the DRC report. Such a hearing would have afforded Appellant the opportunity to demonstrate these facts to the Court.

There were glaring differences in the testimony of Mary Fowler in the hearing before Commissioner Howe, her deposition and the hearing testimony given before Commissioner Ruth. NONE of this hearing testimony was part of the reviewable record until Damron had the testimony transcribed as it was significant evidence, which failed to become part of the designated record.

The complete transcript of testimony is included in Motion to Supplement the Record and Amend the Designation of the Record submitted to the Court of Appeals on January 24, 2002.

See Footnote [FN54] in Annotated Findings of Fact Endnotes, **Conflicting Testimony, Credibility** for examples of the differences of testimony by Mary Fowler.

[FN5] **Award of Attorney Fees – Abuse of Discretion**
Counsel for Appellee, Hon. W. Jeffrey Scott, represented the presiding Judge, C. David Hagerman, in his own divorce action and failed to notify Fred Damron he had such a conflict of interest. In light of such a conflict of interest, an award of attorney fees is an abuse of discretion. Copies of case history, decree, motions, cancelled checks and testimony are included at the rear of these endnotes. See [FN2] **Attorney W. Jeffrey Scott – Conflict of Interest** for supporting exhibits and testimony.

[FN6] **Key Evidence Failed to be Designated or Reviewed by Courts**
One of the key issues in the appeal is the fact Appellant's case has never been heard. The Lower Court denied Appellant any meaningful hearing on the objections to the DRC report. The Lower Court failed to review ANY of the record. The Court of Appeals refused to allow the transcript of proceedings to be designated. Even though testimony was given by all parties, it was not made part of the designated record and therefore NEVER reviewed by anyone, including the DRC, Trial Court Judge or Court of Appeals. Even after the transcript was made available, and it clearly indicates the abuses in this case by the Lower Court, the Court of Appeals refused to allow the record to be supplemented with the actual Trial Court proceedings. Appellant has a clear case, yet all steps in the judicial chain refuse to allow the evidence,

which is not new evidence, to be designated supporting his claims. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.

[FN7] **Bowling Drive Property, Mortgage (Home of Fred Damron/Mary Fowler)**
The finding of a $42,000 mortgage balance at the time of marriage was erroneous. Testimony stipulated the mortgage balance at the time of marriage was over $47,000, but less than $48,000. This was a $6,000 error. See the following supporting testimony.

Page 28 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Ms. Fowler, at the time you and Mr. Damron were married, did you or did you not owe about $47,000 on the Bowling Drive property?

Fowler: Yes.

Justice: And during the marriage it was paid off?

Fowler: Yes, sir.

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Justice: So $47,000 – actually the principle was $47,000 – you paid off – paid that principle down to zero during the marriage, did you not? Yes or no?

Fowler: Yes.

Justice: Now that check was payable to whom?

Fowler: Out of our checking account to Peoples Security Bank.

Justice: Peoples Security Bank. That payment was for what?

Fowler: A house payment.

Justice: That same house payment on the house on Bowling Drive?

Fowler: Yes, sir.

Page 5 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: And there was a mortgage against it at that time of $50,000; is that correct?

Fowler: If it says that, yes.

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Justice: You owed about $50,000 on that house at the time you were married, right?

Fowler: Yes, sir.

Justice: And it was paid off after the marriage and before the divorce; is that right?

Fowler: Yes, sir.

Page 25 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Damron: It was a $50,000 loan that was on the home that we paid off during the marriage.

Page 33

Justice: While you were married, you paid off a $50,000 – I think forty-six or $47,000 mortgage. Is that correct?

Page 34

Damron: Yeah, the mortgage that was owed when we were married was almost forty-eight thousand. Just a little less than that.

Justice: And that was paid off.

Damron: That was paid off by 1994.

Justice: From what moneys?

Damron: Moneys that we had earned jointly.

Justice: So you retired that - that debt was retired early?

Damron: Yes

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Justice: Did you receive any benefit at all from paying off her mortgage on her home?

Damron: No, I did not.

Justice: Are you asking the Court to reimburse you half of those amounts – the $47,000 mortgage and the twenty-some thousand dollars you paid on her (Mary Fowler) Chapter 13 bankruptcy?

Damron: I think that would be fair, yes.

[FN8] Midland Trail Loan, Bowling Drive Additional Security

This statement by the Court of Appeals (and DRC) is misleading. Testimony stipulated the amount borrowed to purchase the Midland Trail property was $52,500. The Midland Trail property was used for $38,500 collateral. The home of George Kimbler was used for $7,500 collateral. The home of Fred Damron and Mary Fowler was used for $7,500 collateral. Fowler indicated by testimony the balance of the security on the home was $6,000. As of February 25, 2002, the balance of collateral against the home of Fred Damron/Mary Fowler and George Kimbler is $750 on each home.

Page 63 *George Kimbler Testimony, Damron v. Damron, September. 8, 1999*

Scott: And do you remember the original principle amount that you borrowed?

Kimbler: I believe it was $52,500

Page 52 *Mary Fowler Deposition, Damron v. Damron, December. 4, 1998*

Fowler: And they're (Bank of Ashland) holding my house right now, Jeff, for $6,000.

Page 19 *Fred Damron Testimony, Damron v. Damron, September. 15, 1999*

Damron: Our home, Kimbler's home was also used as the additional collateral.

[FN9] Midland Trail – Purchase Amount

This finding was erroneous. Testimony was provided regarding the amount of the original purchase in testimony. One hundred percent (100%) of the purchase price for the property was borrowed. The original amount was $52,500.

Page 63 *George Kimbler Testimony, Damron v. Damron, September. 8, 1999*

Scott: And do you remember the original principle amount that you borrowed?

Kimbler: I believe it was $52,500.

[FN10]**$52,000 Lien not placed on Bowling Drive Property**

This finding was erroneous. Testimony provided the amount of the lien used as additional collateral for the purchase of the Midland Trail property was $14,000, which was split between George Kimbler's and Fred Damron/Mary Fowler's home, as $7,500 was placed on each home. Fowler gave testimony in 1998, regarding the balance on the Bowling Drive home, which was $6,000. As of March 2, 2002, the balance of collateral against the home of Fred Damron/Mary Fowler and George Kimbler is $750 on each home.

Page 63 *George Kimbler Testimony, Damron v. Damron, September. 8, 1999*

Scott: And do you remember the original principle amount that you borrowed?

Kimbler: I believe it was $52,500.

Page 52 *Mary Fowler Deposition, Damron v. Damron, December. 4, 1998*

Fowler: And they're (Bank of Ashland) holding my house right now, Jeff, for $6,000.

Page 19 *Fred Damron Testimony, Damron v. Damron, September. 15, 1999*

Damron: Our home, Kimbler's home was also used as the additional collateral.

[FN11]**Midland Trail & Boyd County Tanning Purchase by Fred Damron**

This finding was erroneous stating there was not any evidence that Fred Damron had paid Mary Fowler for the building and business. Testimony by all parties in all hearings stated Mary Fowler received $25,000 paid by cashier's check and Fred Damron made four monthly payments of the mortgage he assumed and held Mary Fowler harmless. After which a dispute ensued between George Kimbler (other half owner of building) and Fred Damron as Damron was paying the complete utility costs for 100% of the building. Damron testified, the Court, in a separate matter, was aware of the matter in the dispute between Kimbler and Damron.

Page 4 _*Mary Fowler Testimony, Damron v. Damron, October 8, 1998*_

Fowler: I had a building with Mr. Kimbler – George Kimbler, which he (Fred Damron) bought from me for $25,000

Scott: Who bought it?

Page 5

Fowler: Fred. He gave me $25,000.

Scott: An when was it that he paid you $25,000 for your interest in the building?

Fowler: It was about three months later. (Petitioner's Exhibit No. 1 shows date of purchase to be November 8, 1997)

Page 32

Fowler: and $25,000 – I should have gotten more than that for a year and four months for living, but if the Judge wants me to give that back I will.

Page 13 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Scott: Did he pay you the twenty-five thousand?

Fowler: Yes, sir.

Page 32

Justice: When you conveyed your half interest in the property on – out on Midland Trail, you were represented at that time by Robert Templeton, were you not?

Fowler: Yes, sir.

Justice: Did you read this deed?

Fowler: Yes, sir, I did.

Page 33

Justice: And it says Mary – the grantor, Mary Gail Damron, hereby acknowledges that she is conveying to the grantee any and all right she has to the aforementioned property by virtue of her marriage to the grantee and expressly waives any claim she has now or may have in the future by way of dower, distributive share, inheritance or otherwise.

Justice: So he's held – you've been held harmless.

Page 17 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice:Did he (Damron) purchase your half interest in that real estate -- (Midland Trail & Boyd County Tanning)

Fowler: Yes --

Justice:Did he pay you $25,000?

Fowler: Yes, sir, he did.

Page 63 *George Kimbler Testimony, Damron v. Damron, September 8, 1999*

Scott: And do you remember the original principle amount that you borrowed?

Kimbler: I believe it was $52,500

Page 65

Kimbler: …except for two payments that Fred Damron was ordered to pay two years ago or whatever it was. He paid two payments on it back whenever – yeah, he paid two payments on it.

Page 33 *Fred Damron Deposition, Damron v. Damron, December 4, 1998*

Scott: And in what manner have you been paying that?

Damron: There were four half-month payments made to the Bank of Ashland.

Scott: So, for four months after the date of this deed you paid $250, roughly?

Damron: Somewhere in that area.

Damron: I view that the consideration was $50,000. I assumed $25,000 of the debt and paid $25,000 to Mary.

Page 29 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: The conveyance that the former Ms. Damron made to you of the Boyd County Tanning property and business, what were the facts and circumstances surrounding that transfer?

Damron: Surrounding the purchase?

Justice: Yes.

Damron: Mary had wanted to, basically, get out of the business, and the – she was also going through a dissolution of – with George and HomeTech – and I agreed to pay her $50,000 for the building and the business.

Justice: And who came up with that figure?

Damron: We did mutually.

Justice: Did – as far as you know, did she have legal representation with regard to that transfer?

Damron: Yes, she did.

Justice: And who was her attorney at the time?

Damron: Robert Templeton.

Justice:Did Mr. Templeton also represent her in the dissolution proceedings with Mr. Kimbler?

Damron: That is correct.

Page 30
Justice: Did – or has she filed any actions or made any attempts to set that transfer aside?

Damron: No.

Justice: Have you received any demands from any attorneys or from her with regard to that transaction?

Page 31
Damron: No, I have not.

Justice: Did you have discussions with her at the time the transaction took place?

Damron: Yes, she was actually – we were together at the business in your presence when the transaction actually occurred.

Justice: Did you have any discussions that she was transferring any claim she would have against that property in the event the divorce went through?

Damron: Yes, she was transferring her dower interest and all of her interest in the business and the building.

Justice: Did she tell you why she did that?

Damron: No, not really, she just said she didn't want to work anymore.

Page 33 *Fred Damron Deposition, Damron v. Damron, December 4, 1998*

Scott: Why did you only make four of those half monthly payments?

Damron: Well, that gets into another issue with the George Kimbler who owns the other half of it. We're now at a point where I am paying utilities and his is paying the payment.

[FN12]**Midland Trail – Conveyance from Fred Damron to Hazel Damron**

This is a misleading statement by the Court. The building and business was purchased by Fred Damron, including the dower interest of Mary Fowler. The Court alludes the transfer appears to be improper, yet the property does not have ANY marital interest as established by testimony by both parties and by the clear language within the deed between Fred Damron and Mary Damron. Mary Damron was represented by counsel during the transfer and counsel was present during the transfer. See [FN11] for additional supporting testimony.

Page 17 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Did he (Damron) purchase your half interest in that real estate -- (Midland Trail & Boyd County Tanning)

Fowler: Yes --

Justice: Did he pay you $25,000?

Fowler: Yes, sir, he did.

Page 13 _Mary Fowler Testimony, Damron v. Damron, September 8, 1999_

Scott: Did he pay you the twenty-five thousand?

Fowler: Yes, sir.

Page 32

Justice: When you conveyed your half-interest in the property on – out on Midland Trail, you were represented at that time by Robert Templeton, were you not?

Fowler: Yes, sir.

Justice: Did you read this deed?

Fowler: Yes, sir, I did.

Page 33

Justice: And it says Mary –- the grantor, Mary Gail Damron, hereby acknowledges that she is conveying to the grantee any and all right she has to the aforementioned property by virtue of her marriage to the grantee and expressly waives any claim she has now or may have in the future by way of dower, distributive share, inheritance or otherwise.

Justice: So he's held – you've been held harmless.

Page 29 _Fred Damron Testimony, Damron v. Damron, September 15, 1999_

Justice: The conveyance that the former Ms. Damron made to you of the Boyd County Tanning property and business, what were the facts and circumstances surrounding that transfer?

Damron: Surrounding the purchase?

Justice: Yes.

Damron: Mary had wanted to, basically, get out of the business, and the – she was also going through a dissolution of – with George and HomeTech – and I agreed to pay her $50,000 for the building and the business.

Justice: And who came up with that figure?

Damron: We did mutually.

Justice: Did – as far as you know, did she have legal representation with regard to that transfer?

Damron: Yes, she did.

Justice: And who was her attorney at the time?

Damron: Robert Templeton.

Page 31

Justice: Did you have discussions with her at the time the transaction took place?

Damron: Yes, she was actually – we were together at the business in your presence when the transaction actually occurred.

Justice: Did you have any discussions that she was transferring any claim she would have against that property in the event the divorce went through?

Damron: Yes, she was transferring her dower interest and all of her interest in the business and the building.

[FN13]**Midland Trail – Transfer to Hazel Damron, Consideration, Non-Marital Asset.**

This finding is erroneous. Testimony established the transfer was for the original $25,000 loaned to Fred Damron by Hazel Damron to purchase the marital interest in the building and Boyd County Tanning from Mary Fowler and additional monies that Hazel had loaned Fred at other times. See supporting testimony below.

Page 14 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Damron: I deeded it to Mother because of money I had – I had owed her, and also I did it for – one other reason was Mary had shot at me and I felt that it was important to, you know, get her – get Mother some security.

Scott: And did you come to the Boyd County Attorney or the grand jury of the Boyd District Judge and have a criminal complaint filed against Mary for shooting at you..

Damron: Yes I did.

Scott: …or get a domestic violence order?

Damron: Yes I did.

Page 87 *Hazel Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: You have also purchased the Boyd County – a half-interest in the property that Boyd County Tanning is located on. Is that correct?

Hdamron: Right.

Justice: Did you pay Fred any money for that?

Hdamron: No.

Justice: What was the consideration for the transfer?

Hdamron: That was – he – I have helped him – or his late Father and I have helped him in many ways with loans and so forth, and he felt, real, real bad that he hadn't been able to pay me back any, and so that was the reason for that transfer.

Justice: Does he still owe you money?

Hdamron: He sure does.

Page 65 *Fred Damron Deposition, Damron v. Damron, December 4, 1998*

Scott: I believe I've seen where you conveyed your interest in this Midland Trail property that you acquired by that November 1997 deed to your mother. Do you recall doing that?

Damron: Yes.

Page 66

Scott: And what was the purpose for that?

Damron: The purpose of what, transferring it to Mother?

Scott: Yes.

Damron: Because of the debts that I owed her.

Scott: And she accepted that as payment?

Damron: Partial.

[FN14]**Lakewood Village – Not Marital, Purchased & Owned by Hazel Damron**
This is erroneous. Fred Damron acted as an agent for Hazel Damron to purchase the property. He and his handicapped Son, whom he now had custody, needed a place to live and his Mother, Hazel, intended to purchase a temporary place for them to live as Mary Fowler refused to allow Fred's handicapped Son to live with them. There was no evidence or testimony to suggest that any marital funds were used to purchase the property. The property was purchased by Hazel Damron with her own money and she testified as such.

Page 85 *Hazel Damron Testimony, Damron v. Damron, September 15, 1999*
Justice: You purchased a little, kind of a cabin at Lakewood Village. Do you recall that?

Hdamron: Yes, I do.

Justice: And do you recall how much you paid for that?

Hdamron: Fifteen thousand.

Page 86
Justice: And was that paid with your own funds?

Hdamron: Right.

Justice: And for what reason did you purchase that?

Hdamron: Fred – his Son – his oldest Son – when he became fourteen, he came to live with his Dad, or wanted to live with his Dad, but Fred's wife, Mary, that's sitting right there, she didn't want him, and Stewart – his name is Stewart – and he had a terrible home life at home, and Fred tried every way in the world – he just tried every way in the world to get Mary to agree for him to live with them, and we worked it out that he would – Fred wanted him to go to Boyd County High School and – so that he could be with him and help him in the evenings with his homework and so forth, and so Fred – we had arranged – or we had decided that he would spend the weekends with me and the only time that he would have to stay with them would be four nights a week and it would not cost them anything. I was going to furnish the funds. It wouldn't hurt her – you know, any funds that she would need and so forth, so she would not agree, and so I – he had to have something to live in, and so he picked out just the cheapest thing he could get, you know, and so I paid for it.

Justice: Did Fred contribute in any way towards this purchase?

Page 87
Hdamron: No.

Page 98
Scott: Okay. Did you pay the fifteen – what'd you pay for the – was it fifteen thousand for the Lakewood Village…

Hdamron: Fifteen thousand. Exactly.

Page 16 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Scott: There's a house on Lodge Lane that you had acquired during the marriage, too. Is that correct?

Damron: No, I had not acquired it.

Page 17

Scott: So does that mean no, you didn't

Damron: I did not purchase it, no. My Mother purchased it.

Page 37

Justice: House on Lodge Lane, purchased by your Mother. Is that correct?

Damron: That is correct.

Justice: And the deed is in her name. Is that also correct?

Damron: That's correct.

Page 6 *Fred Damron Deposition, Damron v. Damron, December 4, 1998*

Scott: The address there at Lakewood Village at which you sometimes stay, I believe you said is owned by your Mother; is that correct?

Damron: That is correct.

Scott: And did you deed property to her that is that address?

Damron: No, I did not.

Scott: Okay. Do you know how she acquired it?

Damron: She purchased it.

Scott: From whom?

Damron: I'm not sure of the lady's name, but the lady that has Brooks Wells Enterprises.

Scott: Did you ever own real estate at Lakewood Village?

Damron: No, I did not.

Scott: Did you pay the purchase price for your Mother to acquire this place at Lakewood Village?

Damron: No, I did not.

Page 7
Scott: Did you give money to anybody else to buy property at Lakewood Village?

Damron: No, I did not.

Page 107 *Hazel Damron Testimony, Damron v. Damron, September 15, 1999*
Justice:Mrs. Damron, do you have sufficient monies – have you had sufficient monies and estate to loan the kind of money you testified to to Mary Damron (Mary Fowler) and to your son?

Hdamron: Yes, I have.

[FN15]**Lakewood Village – Deed, Purchased by Hazel Damron**
This statement by the Court is misleading. The Court leaves the impression Fred Damron was purchasing the property but placing it in his Mother's name. This was not the case. It was made clear to Brooks Wells Realty the purchase was being made by Hazel Damron with her own funds which would require the property to be in her name. No marital funds were used. No evidence was supplied to indicate otherwise. Hazel Damron stated she had money and estate to make the purchase. See [FN14] **Lakewood Village – Not Marital, Purchased & Owned by Hazel Damron** for supporting testimony.

[FN16]**Lakewood Village – Settlement Agreement, No Marital Funds**
This is a misleading statement by the Court. Fred Damron was required to sign the settlement statement as he was acting as an agent for his Mother, but the inference Fred Damron purchased the property. is erroneous as Hazel Damron testified the purchase was with her own funds. No marital funds were used. No evidence was supplied to indicate otherwise. Hazel Damron stated she had money and estate to make the purchase. See [FN14] **Lakewood Village – Not Marital, Purchased & Owned by Hazel Damron** for supporting testimony.

[FN17]**Vehicles owned by Parties**
These findings are erroneous. First, the Court failed to report the ownership of several vehicles, including the 1985 GMC Truck, 1981 Ford F350 Dump Truck, and the 1989 Chevrolet S-10 4X4 Truck. Second, the 1992 Corvette is not what the Petitioner normally drives. Mary began driving the Corvette, which was a Sunday pleasure vehicle, after she totaled the family Jeep Cherokee while drunk, on valium and marijuana, and leaving from dinner with Commissioner Ruth's relative,

Jackie Ruth. She then sold the wrecked Jeep, in both parties' names, without Damron's knowledge for $250. It was purchased for over $27,000 and a $10,000 non-marital vehicle, belonging to Damron, was used in trade for the Jeep. The Corvette was purchased for $37,000 with a $2,500 non-marital vehicle used in trade, which belonged to Damron. Third, the three (3) Toyota MR-2 vehicles were worth less than $500 each, as one was rammed by Mary Fowler with the S-10 truck and totaled, one was wrecked a year earlier, and one was purchased for $500 for parts.

1985 GMC Truck & 1981 Ford F350 Dump Truck

Page 44 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Fowler: I sold two trucks I got from HomeTech?

Justice: You got a distribution from HomeTech, and you sold those vehicles; is that right?

Fowler: Pardon me.

Justice: You got two vehicles from HomeTech and you sold those; is that right?

Fowler: Yes. And some tools.

Justice: Is that distribution from HomeTech, you all were still married were you not?

Fowler: When I got the trucks?

Justice: You got the trucks while you all were still married?

Fowler: Yes.

Page 21 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*
Scott: What other assets are there?

Damron: There's a 1985 GMC Truck. There's a 1981 Ford F-350 Dump Truck.

Scott: When were those acquired?

Damron: I believe that it was either – I'm not sure of the actual date. It may have been October or November 1997.

Page 36
Damron: As far as I know, she still owns the 1985 GMC. I'm not sure about the dump truck.

Chevrolet S-10, 4x4 Truck
Page 33 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*
Justice: Do you drive a Chevrolet S-10 pickup truck?

Page 34
Fowler: Very Seldom, yes, sir. Yes, sir.

Justice: Okay. Where is it kept?

Fowler: Stays out to my house.

Page 40 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*
Justice: And then another '86 MR-2 was purchased in '97 for $2,500, which is the one that you rammed your pickup truck (Chevrolet S-10) into. That's probably the one you're thinking about.

Page 37 _Fred Damron Testimony, Damron v. Damron, September 15, 1999_

Damron: and there's also a Chevrolet S-10 four-wheel-drive that sits in her driveway that she drives.

Corvette

Page 17 _Mary Fowler Testimony, Damron v. Damron, September 8, 1999_

Fowler: And what I have is I have a '92 Corvette, which appraises for seventeen thousand.

Page 24 _Mary Fowler Deposition, Damron v. Damron, December 4, 1998_

Fowler: -- we bought the Corvette and a Jeep.

Justice: How much did you pay for the Corvette?

Fowler: I don't recall.

Justice: Would it have been about $37,000?

Fowler: Yes, sir.

Justice: Has it been paid off?

Fowler: Yes.

Page 44

Justice: Did you owe on any cars?

Fowler: Yes. But we paid off the Corvette, yes.

Justice: But that was paid off during the marriage?

Fowler: Yes.

Page 36 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Damron: There was a $2,500 truck that was traded in on the Corvette that was also a non-marital asset.

Toyota MR-2 Vehicles, Three (3)

Page 33 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: One of the MR-2s was purchased --

Fowler: The black -- you're telling me -- there's three of them. Two of them, two red ones --

Justice: Okay. There's three.

Fowler: Yeah.

Justice: Okay.

Fowler: One was for 500; the other was for like 2,000; the other was like twenty-some (from) for my son-in-law.

Page 40 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Let's see, you gave him an '85 Toyota MR-2. It was purchased in 1994 for $2,500. Is that correct?

Fowler: I'm not sure about the price?

Justice: An '86 Toyota MR-2 purchased for $500 for parts.

Justice: And then another '86 MR-2 was purchased in '97 for $2,500, which is the one that you rammed your pickup truck into. That's probably the one you're thinking about.

Page 37 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: The MR-2 automobiles you've shown in your exhibit, how much were paid for those? Are all three of them operating at the present time?

Damron: As far as driveable, no.. There's a red MR-2 that's wrecked in the front.... There's another red MR-2 that – Mary took the S-10 four-wheel-drive, caved the side of it in and totaled that vehicle. Then there's the black MR-2. It was bought for $500 for parts.

[FN18]**Jeep Grand Cherokee – Totaled by Mary Fowler while drunk**

The Jeep was totaled by Mary Fowler while drunk, on Valium and marijuana while leaving from dinner with Commissioner Ruth's relative, Jackie Ruth. Damron used a non-marital vehicle valued at $10,000 to trade for the vehicle. The vehicle was in both Damron and Fowler's names. After wrecking the Jeep, Fowler sold the vehicle for $250 without the knowledge or permission of Damron. Fowler claimed she hit a deer, however, there was no indication from any of the reports supporting her claim. Fowler pled guilty to DUI, had a blood alcohol level of 2.1 and tests submitted by the police showed Valium and marijuana in her system. See supporting testimony below.

Jeep Grand Cherokee

Page 44 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Now, you say that this '92 Corvette is the only thing that you've got to drive?

Fowler: Yes, sir.

Justice: Now, that's because you wrecked the '93 Jeep Grand Cherokee in July '97 while you were drunk?

Page 45

Justice: Were you charged with DUI and plead guilty?

Fowler: Yes, I did plead guilty because I was drinking wine. I'm not going to deny that.

Justice: Alright. Did you purchase that Jeep Cherokee in March of '95 for $27,000?

Fowler: Yes and HomeTech made every payment of it because I used it for business.

Justice: And $10,000 of that was used from an automobile that Mr. Damron owned as a down payment on that vehicle wasn't it?

Justice: He traded in a '91 Chevrolet Blazer on it didn't he that his Mother gave him?

Fowler: On what?

Justice: On the Cherokee.

Fowler: Yes but I made every payment, and he drove it just as much as I did.

Justice: And you wrecked it?

Fowler: Yes, accidentally.

Page 46

Justice: How much was owed on it?

Fowler: I don't recall, sir. $8,000 or $9,000. I don't know.

Justice: Alright. And then you sold it for $250 didn't you?

Fowler: It was totaled. I was so bizarre and upset at that time that I let the guy have it.

Justice: For $250?

Fowler: That's what he gave, yes.

Page 27 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: And whose name was that vehicle (Jeep Grand Cherokee) in?

Fowler: Fred and Mary Damron.

Justice: So, did you sell it to the junkyard?

Fowler: They gave me $250 and called the wrecker tow bill free.

Justice: Did you have any estimates on the damage?

Fowler: No, I did not.

Page 28

Justice: Did you change any of the name of the ownership on the vehicle before you sold it?

Fowler: No, sir.

Justice: Did you remove Fred's name from it at all?

Fowler: No, sir, I did not.

Page 29
Justice: Did he know that you sold it when you sold it? In other words, was he aware you were going to sell it?

Fowler: No

Page 26 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*
Fowler: There was a Jeep – the one I totaled that night, and I think at the time it was totaled, we owed probably nine thousand.

Page 37
Justice: The Grand Cherokee, that was purchased March the 20th, 1995, for $27,069.50. Isn't that correct?

Page 38
Fowler: I'm not for sure the exact amount.

Justice: Isn't it true that $10,000 towards that purchase was the trade-in of a 1991 Chevrolet Blazer?

Fowler: Right, and I sold mine, too, and give him the cash money.

Justice: And where did the Blazer come from?

Fowler: His Mother had give it to him.

Justice: Then the balance of the $17,069 was financed. Isn't that correct?

Fowler: I'm – If that's the right amount, yeah.

Justice: You all borrowed the money to… …purchase it, and then you wrecked – you totaled the vehicle.

Fowler: I had an accident, yes.

Justice: While you were drunk.

Fowler: No, I did not. I had three glasses of wine and that's what they found in my system 'cause I had the wreck or they wouldn't have stopped me for no reason.

Justice: Ms. Damron, I'm sorry, Ms. Fowler, you pled guilty to DUI, your blood alcohol was twenty-one, and the blood test showed valium and other drugs in your system. Is that not correct?

Fowler: That's – That's – I had one valium, three glasses of wine, and that was it.

Justice: Now – and you're asking that he be required to pay half that debt on this vehicle you totaled?

Page 36 *Fred Damron Testimony, Damron v. Damron, September 15, 1998*

Justice: The debt on the Jeep Cherokee, what are you asking the Court to do with regard to that?

Damron: The debt that's remaining, of course it's on my credit history. I did not wreck and total the vehicle. I didn't cause her to do what she did, and I feel that she should be made responsible for that indebtedness and see that it is paid off.

Justice: Did any part of that purchase involve use of any non-marital funds or property by you?

Damron: Yes. Every vehicle that was purchased had some non-marital funds in it. There was a Blazer that my Mother and Father had given me that was a $10,000 value, and it was traded in against the Cherokee, and the balance was financed, so the $10,000 Blazer was a non-marital asset.

Page 23

Damron: I want to make sure that the $10,000 that's on the – owed on the Jeep is paid off. I don't feel that I should be made responsible for that 'cause, you know, I wasn't going to dinner and drugging and drinking with Jackie Ruth and then tearing up the vehicle.

[FN19]**Boyd County Tanning – Operation after Fowler totaled Jeep while drunk.**

This is a misleading statement by the Court of Appeals (and DRC) and erroneous. Mary Fowler's accident occurred on July 17, 1997, not June. Both Mary Fowler and Fred Damron operated Boyd County Tanning from February, 1997, (Opening of Business) to July 17, 1997, the date of her driving under the influence of drugs and alcohol accident. Fowler seldom worked at the business as Damron was the primary person handling its affairs. Fowler only operated the business 15 times during the period from February to July, 1997. Damron operated the business with his Son after the date of Fowler's DUI accident. Damron purchased Fowler's marital and dower interest in the business and building on November 8, 1997. After that time, it no longer became a marital interest. See [FN11] **Midland Trail & Boyd County Tanning Purchase by Fred Damron**, [FN12] **Midland Trail – Conveyance from Fred Damron to Hazel Damron**, [FN18] **Jeep Grand Cherokee – Totaled by Mary Fowler** and [FN55] **Boyd County Tanning – Non-Marital** for supporting testimony.

[FN20]**Carter County Tanning – Non Marital, Non Marital Funds Purchase**
This statement is misleading by the Court of Appeals (and DRC). This equipment was purchased with non-marital funds on May 1, 1998, during the separation, 21 days before the divorce was final. The money was obtained as a loan from Hazel Damron. Mary Fowler testified she did not have any evidence showing marital funds were ever used for the purchase.

Page 31 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: The Carter County Tanning business that you started in Olive Hill, where did the funds come from to purchase those materials and pre-pay the rent?

Damron: It was a loan from my Mother.

Justice: Do you have evidence of that?

Damron: Yes, I do.

Justice: Would she have evidence of that?

Damron: Yes she would.

Page 87 *Hazel Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: Are you familiar with his purchase of and lease of the Carter County Tanning property…

Hdamron: Yes.

Justice: …in Olive Hill?

Hdamron: I am.

Justice: Do you have any knowledge as to where the money came from to complete that transaction?

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Hdamron: That came from me.

Justice: Did you pay it's entirety – eight thousand some dollars?

Hdamron: Right.

Page 52 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Trace for me, if you can, any marital assets that you claim went in to establish either Carter County Tanning or the place in Huntington.

Justice: Show me..

Fowler: I can't show nothing to nobody. I can't do nothing.

Page 107 *Hazel Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: Mrs. Damron, do you have sufficient monies – have you had sufficient monies and estate to loan the kind of money you testified to to Mary Damron and your Son?

Hdamron: Yes, I have.

[FN21] **Left Blank for Place Holder**

[FN22]**Boyd County Tanning – Non-Marital, Income Non-Marital, Reliability of Documents**

This is erroneous. Any income derived from Boyd County Tanning was non-marital, as Mary Fowler's marital and dower interest had been purchased by Fred Damron on November 8, 1997. Damron provided documents of the income and expenses of the business in summarized spreadsheets and submitted to the Court as Respondent's Exhibits No. 4 and No. 5. These were created from expenses and income from the business. Most of the business records had been stolen by Mary Fowler in numerous burglaries, which were reported to authorities, and portions of these documents were made part of THE testimony before this Court. Several records were submitted in Court by Fowler from these thefts. The business operated at a loss due to the high cost of utilities, as Damron was required to pay the utilities for the entire building and due to the thefts of products and merchandise by Fowler or her accomplices on several occasions. See [FN43] **Burglaries, Thefts, Destruction of Property, Other – By Mary Fowler** and testimony below.

Page 33 *Fred Damron Deposition, Damron v. Damron, December 4, 1998*

Damron: Well, that gets into another issue with the George Kimbler who owns the other half of it (building on Midland Trail). We're now at a point where I

am paying utilities and his is paying the payment.

Page 37 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Have you recently appeared at that business (Boyd County Tanning) and carried off some of the stock and trade?

Fowler: Right after my court date on October the 8th. Yes, I went out and got me a few candles, and I took 90-some dollars out of the drawer. And I'm going to subpoena and have her sworn, which she said I took $980.

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Justice: What else did you take out of there?

Fowler: That was it.

Justice: Did you take any candles?

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Justice: Did you actually take the money out of the cash drawer or did somebody do that for you?

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Justice: There was somebody working there, wasn't there?

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Justice: And you took it while she was gone?

Fowler: Yes, I sure did.

Page 48 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Now, you've carried some stuff out of there since you all separated and the divorce, haven't you?

Fowler: I went in and I took $100 and what change was in the drawer and I took six to eight candles.

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Justice: And there was a restraining order obtained on account of that, wasn't there?

Fowler: Yes.

Page 24 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Damron: I see that's another stolen document that you have in your hand that was taken out of my vehicle during the burglary.

Damron: I just want to make sure it's accurate for the record, that it's identified and where it came from.

Page 63 *Mary Fowler Testimony, Damron v. Damron, September 15, 1999*

Fowler: Yes, sir, I told her that at the last – I told you that at the last hearing. I took it out of his truck…

[FN23]**Social Security Number – Mix-up and Corrections**
Damron was clear in his testimony there had been errors, which an investigator was retained to determine and see the corrections were instrumented, which did occur per testimony.

Page 85 *Fred Damron Testimony, Damron v. Damron, September 8, 1999*

Damron: There was a mix-up on that number. I'll explain it. There was a mix-up on that number. That is my son's number…

Scott: Okay.

Damron: …and after we were made aware of that, I had my investigator take care of that and investigate what numbers were what.

Page 29 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice:That's the – Ms. Fowler, I hand you what's been marked as Defendant's 1. Let me ask you if you can identify that.

Fowler: Yes, that came out of our checking account, yes, sir.

Justice: As a matter of fact, it has Mr. Damron's Social Security number on it, doesn't it?

Fowler: Yeah,…

Justice: So it's no big, deep, dark secret what his Social Security number is, is it?

[FN24]**Mayson Haynesworth's Testimony – Inclusion Error by the Court, Unrelated to Property Division**
The inclusion of Haynesworth's testimony was an error by the Lower Court, as it had nothing to do with the property division and was objected to by Damron. Haynesworth had lost a significant case to Frederick Damron and would be expected to say nothing positive. Haynesworth was used as a mudslinger in a hearing about property, which had nothing to do with misconduct. Haynesworth lost his case, using the same arguments, to a tribunal. Allowing this testimony and making any form of basis from testimony regarding credibility, is clear error. Damron testified about Haynesworth's testimony being inaccurate in the hearings, which were not provided to the Court for review.

Page 26 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Scott: You – you were in the courtroom when Mr. Mayson Haynesworth testified, weren't you?

Damron: Yes I was.

Scott: And he was accurate in his testimony, wasn't he?

Damron: No he was not.

Scott: What do you take issue with as far as his testimony is concerned?

Damron: I take issue with all of his testimony, but specifically, Mr. Haynesworth tried to – and again, it's kind of an issue of trying to slur my credibility – Haynesworth testified that I was found, you know, that I had been terminated, but what he failed to say that I had been reinstated and found not guilty of those issues that he – Internal Auditing Department – investigated. That's the reason there was a settlement for $85,000 gross was for backpay for two years that I had been off work.

Page 8 *Mayson Haynesworth Testimony, Damron v. Damron, October 8, 1998*

Justice: Your Honor, show my objection. We are supposed to be inquiring as to marital property in this hearing, and he has been put on the stand and he has testified to what my client received from Norfolk Southern Railroad by way of compensation.

Justice: He hasn't testified. His credibility is not at issue.

Howe: Well, I understand. I think I've heard enough on it though.

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Justice: I thought we heard enough on this, Your Honor.

Howe: I have.

Justice: You got a subpoena in Roanoke (Virginia) issued by the Boyd Circuit Court to testify here today?

Haynesw: Yes.

Justice: Did you realize you didn't have to appear and that subpoena was not good?

Haynesw: No, I didn't realize that I didn't have to.

Justice:Did anyone pay your way here to testify?

Haynesw: Norfolk Southern paid my way here.

Justice:How did they do that?

Haynesw: We have an interest in this whole matter.

Justice:That's why. That answers my question. You have an interest in this divorce?

Haynesw: Not in the divorce.

Page 2 *Rodney S. Justice Remarks, Damron v. Damron, September 8, 1999*

Justice: (Speaking to DRC Ruth) I take issue with the relevancy of his (Mayson Haynesworth) testimony anyway.

[FN25] **Bowling Drive – Awarded to Mary Fowler**
This is clear error and an abuse of discretion. The mortgage was nearly $48,000 at the time of marriage and it was retired in 1994, before the divorce. Damron had a marital interest in this property based on the Brandenburg formula and had expended over $38,000 in improvements/remodeling and repairs to the home in addition to paying off the mortgage. See [FN7] **Bowling Drive Property, Mortgage (Home of Fred Damron/Mary Fowler)**, [FN56] **Non-Marital Property – Failure to Identity**, [FN57] **Remodeling/Improvements and Repairs – Bowling Drive** for supporting testimony.

[FN26]**Lakewood Village – Awarded to Fred Damron, which belonged to Hazel Damron, Non-Marital, No Marital Funds used to Purchase.**

This is clearly erroneous as there was not any evidence whatsoever Fred Damron purchased the real estate and his executing a purchase contract is not indicative he did so. Hazel Damron testified she purchased the property with her own funds so that her Son and Grandson would have a place to live. Fred Damron verified this and the deed certainly bears this out. At worse, it might be construed as a gift to Fred Damron, which would make it non-marital property. There is no evidence to the contrary and any finding Fred Damron has, or had, any interest in this property, is not supported by any credible evidence. See [FN14] **Lakewood Village – Non-Marital, Purchased and Owned by Hazel Damron,** [FN15] **Lakewood Village – Deed, Purchased by Hazel Damron,** [FN17] **Lakewood Village – Settlement Agreement, No Marital Funds**, for supporting testimony.

[FN27]**Carter County Tanning – Awarded to Fred Damron, Non-Marital, No Marital Funds used to Purchase.**

This is clearly erroneous as there was not any evidence Fred Damron used any marital funds to purchase Carter County Tanning. Hazel Damron testified she loaned the funds for the purchase. This purchase was made 21 days before the divorce decree order. Mary Fowler testified she had no evidence marital funds were used in the purchase. Fred Damron testified the money was borrowed from his Mother. See [FN20] **Carter County Tanning – Non-Marital, Non-Marital Funds Purchase** for supporting testimony.

[FN28]**Boyd County Tanning Income – Awarded to Fred Damron, Non-Marital, Marital and Dower Interest Purchased in 1997 from Mary Fowler.**

This is clearly erroneous, as at the time of the hearing, Fowler had conveyed her interest in the Boyd County Tanning business and the Midland Trail property to Damron for $25,000 plus the assumption of her portion of the mortgage on the Midland Trail property. A fact Fowler did not dispute, nor had she taken any action to set aside this transfer, nor make any claim she was coerced or tricked into doing so. Even though this transfer took place during the marriage, one spouse can, by agreement, convey her marital interest in property to the other spouse free and clear of any marital claims she may have. Fowler clearly accomplished this by the terms of the deed. A court has no right to terminate or change this transfer. The DRC was clearly wrong to ignore the non-marital character of the Midland Trail property and business after the conveyance to Damron and the DRC also erroneously disregarded the marital character of the property when it was purchased in 1995. After the transfer to Damron of Fowler's interest in the property and business for $25,000 plus the assumption of her portion of the mortgage, she no longer had any viable claim to the property and to characterize it as marital is clearly erroneous. See [FN11], [FN12], [FN55], [FN19], [FN22] for supporting testimony. See also Annotated Findings of Fact [FN33], [FN34] for additional supporting testimony.

[FN29] **Boyd County Tanning Equipment Ordered Sold – Taken from Fred Damron as these were Non-Marital Assets** –

This is clearly erroneous. The Boyd County Tanning items were included in the purchase of Fowler's interest of the Midland Trail property, for which she received $50,000 of value. To order them sold would violate the terms of the transfer. See [FN11] **Midland Trail & Boyd County Tanning Purchase by Fred Damron,** [FN55] **Boyd County Tanning – Non-Marital** for supporting testimony.

[FN30] **Debt National City Bank for Jeep Grand Cherokee Mary Fowler wrecked while drunk – Awarded to Fred Damron**
This is clearly erroneous. The deficiency judgment is for the 1993 Jeep Grand Cherokee, until Fowler wrecked it while drunk and under the influence of valium and marijuana, while returning from a date with Jackie Ruth, relative of the DRC. She pled guilty to DUI in the Boyd District Court. The Jeep was totaled and she sold it for $250 without the permission or knowledge of Damron. It was worth approximately $20,000 and there was a lien against it for $9,000, therefore, the equity was approximately $11,000. The vehicle was purchased for $24,000 with a non-marital asset valued at $10,000 as a trade and the balance financed by National City Bank, not Fifth Third Bank as erroneously found by the DRC. The DRC ignored this situation and allowed Fowler to profit to the tune of $18,000 from totaling a vehicle while drunk, on drugs, and committing adultery with a married man and requiring Damron to pay for it. See [FN18] **Jeep Grand Cherokee – Totaled by Mary Fowler while drunk** for supporting testimony.

[FN31] **Vehicles Awarded – Clearly Unsupported Award**
The DRC found the "parties own a 1992 Corvette vehicle which the petitioner normally drives" and valued the car at $18,000. However, at the time the parties' cohabitated, the vehicle was only driven occasionally. The primary vehicle Fowler drove was a 1993 Jeep Grand Cherokee, until she wrecked it while drunk and under the influence of valium and marijuana, while returning from a date with Jackie Ruth, relative of the DRC. She pled guilty to DUI in the Boyd District Court. The Jeep was totaled and she sold it for $250 without the permission or knowledge of Damron. It was worth approximately $20,000 and there was a lien against it for $9,000, therefore, the equity was approximately $11,000. The vehicle was purchased for $24,000, with a non-marital

asset valued at $10,000 as a trade, and the balance financed by National City Bank, not Bank of Ashland as erroneously found by the DRC. The DRC ignored this situation and allowed Fowler to profit to the tune of $18,000 from totaling a vehicle while drunk, on drugs, and committing adultery with a married man and requiring Damron to pay for it. To add insult to injury, Damron was awarded three (3) wrecked Toyota MR-2's valued at $500 each. Unbelievable. The DRC ignored three (3) other vehicles in Fowler's possession. A 1989 Chevrolet S-10 4X4 worth $2,500. A 1985 GMC 1-1/2 ton truck with utility body worth $5,000 and a 1981 Ford F350 dump truck worth $3,500. The DRC also ignored the non-marital vehicles used in trade to the Corvette (Chevrolet S-10, worth $2,500) and in trade to the Jeep Grand Cherokee (Chevrolet S-10 Blazer, worth $10,000). This was clearly erroneous. See [FN17], [FN18] for supporting testimony. See also [FN40], [FN41], [FN42], [FN43], [FN44] in the Annotated Findings of Fact for additional supporting testimony.

[FN32] **Personal Property – Primarily Awarded to Mary Fowler**

The DRC only mentioned a few items of personal property purchased during the marriage… "a treadmill and living room suite in Fowler's possession, a John Deere riding mower in Damron's possession; and the inventory of Boyd County Tanning (4) four tanning beds, computer plus accessories, display cases and eight (8) chairs, and additional miscellaneous items." The DRC was provided with an **extensive list** of valuable property in Fowler's possession, which includes appliances and other property. Apparently, the DRC intends Fowler be allowed to keep these marital items without accounting for them. This situation is patently unfair, not a just allocation of property and clearly erroneous. See footnotes at the end of this section. See [FN11] **Midland Trail & Boyd County Tanning Purchase by**

Fred Damron, [FN55] **Boyd County Tanning – Non-Marital** for supporting testimony. See also [FN45] in the Annotated Findings of Fact **Personal Property – Bowling Drive Home** for additional supporting testimony.

[FN33] **Debt to Bank of Ashland for Midland Trail – Awarded to Fred Damron**
This ruling is erroneous. Damron held Fowler harmless in the transfer of property at Midland Trail and assumed the portion of the mortgage, which was Fowler's responsibility. Damron is only responsible for one-half of this debt as George Kimbler also owns half of the building and therefore, Damron cannot be made responsible for 100% of the debt. See [FN11] **Midland Trail – Mortgage Amount**, [FN16] **Midland Trail & Boyd County Tanning Purchase by Fred Damron** for supporting testimony.

[FN34] **Railroad Retirement – Half awarded to Mary Fowler**
This was clearly erroneous. The Court of Appeals reversed this portion of the DRC order and took the position only Tier II benefits of Railroad Retirement can be awarded. Damron takes the position it is not subject to distribution and in light of the fact Fowler received over $200,000 as a marital award and Damron received NEGATIVE -$10,000 (Less than nothing), this was a clear abuse of discretion.

[FN35]**Attorney Fees – Mary Fowler's fees ordered paid by Fred Damron**
Counsel for Appellee, Hon. W. Jeffrey Scott, represented the presiding Judge, C. David Hagerman, in his own divorce action and failed to notify Fred Damron he had such a conflict of interest. In light of such a conflict of interest, an award of attorney fees was an abuse of discretion, which is one of the objections by Damron. Judge C. David Hagerman failed to allow any meaningful hearing on the objections.

Copies of case history, decree, motions, cancelled checks and testimony are included at the rear of these footnotes.

Chief Judge C. David Hagerman – Conflict of Interest, Using Appellee's Attorney

Counsel for Appellee, Hon. W. Jeffrey Scott, represented the presiding Judge, C. David Hagerman, in his own divorce action and failed to notify Fred Damron he had such a conflict of interest. C. David Hagerman is also Chief Judge for Boyd County. Copies of case history, decree, motions, cancelled checks and testimony are included at the rear of the endnotes. This case is now before the Kentucky Supreme Court. These documents are as follows:

1. Case History, *Hagerman vs. Hagerman 2000-CA-002880-MR*

2. Decree, *Hagerman vs. Hagerman 2000-CA-002880-MR*

3. Motion, *Hagerman vs. Hagerman 2000-CA-002880-MR*

4. Check, *Hagerman vs. Hagerman 2000-CA-002880-MR*

Hagerman vs. Hagerman 2000-CA-002880-MR aka Carter County Case # 98-CI-00211. Case was filed in Carter County, Kentucky, on July 7, 1999. Counsel of Record is W. Jeffrey Scott **(Case History, Decree, Motion)**

Hagerman vs. Hagerman 2000-CA-002880-MR aka Carter County Case # 98-CI-00211. Cancelled Check is included in the rear of the endnotes and written to W. Jeffrey Scott from C. David Hagerman **(Check).** Case testimony by C. David Hagerman was as follows as taken from transcript of testimony **(Testimony),** Russell Lloyd attorney for Ginger Hagerman, W. Jeffrey Scott attorney for C. David Hagerman, and C. David Hagerman:

Page 192 *David Hagerman Testimony, Hagerman v. Hagerman, June 13, 2000*

Lloyd: Just briefly, how much have you paid your lawyer?

Scott: Not near enough. I can tell you that.

Hagerman: Not near what you are trying to get. I paid Jeff up to this point – I believe I paid him about a thousand, and I owe him about $1200 more prior to today. So probably by the time I get through with the whole thing Jeff's fee will be between probably close to $3000 when – is that pretty close?

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Scott: I don't know

Hagerman: Don't claim you don't know.

Lloyd: He's not under oath.

Hagerman: I've paid him about a thousand, and the last statement I got I owe him about $1200, and that was not inclusive of today's festivities.

See sections of [FN2], **Chief Judge C. David Hagerman – Conflict of Interest, Using Appellee's Attorney** and **Attorney W. Jeffrey Scott – Conflict of Interest** for additional supporting exhibits and testimony.

[FN36] **DRC, Lower Court findings – Clearly Erroneous**
It was clear the findings were erroneous. The DRC NEVER reviewed the record. The Lower Court NEVER reviewed the record. The Court of Appeals never reviewed the record.

The RECORD does not support the findings. The RECORD is opposite to the findings. In some instances there is NO EVIDENCE to support the findings at all, which is clearly erroneous. The RECORD before the Court of Appeals presents a distorted view. The Court of Appeals denied Appellant the inclusion of over SIX (6) HOURS of testimony in all hearings. The Lower Court denied the Appellant any meaningful hearing on the objections of the DRC report. The Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes CLEARLY demonstrate that the DRC, Lower Court and Court of Appeals failed to review and consider the entire record in this case. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.

[FN37] **Abuse of Chalupa v. Chalupa, 830 S.W. 2d 391 Ky. App. (1992)**

The Court of Appeals stated in reference to review "keeping in mind that the trial court is in the best position to view the evidence and witnesses as to judge the credibility of same. Chalupa v. Chalupa, Ky. App., 830 S.W.2d 391 (1992)". The Court of Appeals improperly applied **Chalupa v. Chalupa**, 803 S.W. 2d 391 Ky. App. (1992) as a rule of law for credibility as it is not proper to apply to KRS 403.190 which requires division of property "in just proportions" without consideration of marital misconduct which is upheld by numerous cases in Kentucky.

The Court refers to **Chalupa v. Chalupa**, 830 S.W. 2d 391 Ky. App. (1992) as the matter of law for witness credibility in this case. The Appellant agrees to the matter of law in credibility, but it has no basis and does not apply to this case. Such a rule of law is improper to apply to KRS 403.190, which is clearly upheld by case law. This is such a case that the referenced case does not apply before the court when the division is a matter of "concrete tangible" items that can be touched, held, used, and is part of the entire personal property, subject first to separation as marital or non-marital, and then the division of the marital property in just proportions without regard to conduct.

This case speaks loudly of the lack of fundamental fairness that was supplied to the Appellant from the courts. KRS 403.190 requires "the court shall assign each spouse's property to him. It also shall divide the marital property without regard to **marital misconduct in just proportions**" (emphasis added) and in **Goodaker v Littell**, 314 S.W. 2d 539, Ky. (1958) "the trial judge was confronted with conflicting and untrustworthy evidence, his conclusion" according to the Court of Appeals "was so reasonable that the Court of Appeals could not set it aside". A review of the record demonstrates that the award to the Appellee could not be considered reasonable regardless of the condition. The lower Courts order was patently unfair which resulted in an unjust enrichment of the Appellee at the Appellant's expense as clearly defined in **Bogan v Finn**, 298 S.W. 2d 311 Ky. (1957) "claimant must not only show that the other party has received benefit but that it has been at claimant's expense". Such unjust proportions awarded based on erroneous findings of fact have resulted in an unjust enrichment by Appellee.

The evidence clearly demonstrated to the court that the Appellee interfered with the Damron family in every manner possible, from theft, attempted shootings, burglary, harassment, breaking windows, drug and alcohol abuse, perjury, damaging vehicles, destroying marital property, dissipating marital assets and attempting to defraud the elderly of over $100,000. This was the clear evidence provided in the DRC hearing, none of which is referenced by the DRC. Obviously a Saint must be protected rather than accused with actual evidence.

Dowell v Dowell, 490 S.W. 2d 478 Ky. (1973) states that "fault is not a consideration in the division of marital property, and a trial judge who considers marital misconduct in distributing marital property must re-evaluate the distribution". "The legislative mandate to divide marital property in accordance with standards set out in the statue is binding upon the courts and presumptions in making such division should not be indulged in at all" **Herron v Herron**, 573 S.W. 2d 342 Ky. (1978), referring to KRS 403.190. The DRC and lower Court indulged heavily with regard to property division to a patently unfair standard. The lower Court denied the requests of the Appellant through objections and request of hearings on the same thereby failing to provide the Appellant factual findings.

[FN38]**Taking Haynesworth's Testimony into account – Clear Error & Improper**

The inclusion of Haynesworth's testimony was an error by the Lower Court, as it had nothing to do with the property division and was objected to by Damron. Haynesworth had lost a significant case to Fred Damron and would be expected to say nothing positive. Haynesworth was used as a mudslinger in a hearing about property, which had nothing to do with misconduct. Haynesworth lost his case, using the same arguments, to a tribunal. Haynesworth was attempting to retry his case, to the detriment of Appellant in his divorce, which was res judicata. Allowing this testimony and making any form of basis from testimony regarding credibility, is clear error. Damron testified about Haynesworth's testimony being inaccurate in the hearings, which were not provided to the Court for review. Haynesworth was used merely for character assignation with false accusations and statements that were not upheld in a tribunal. See endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes. See also [FN24] **Mayson Haynesworth's Testimony – Inclusion Error by the Court, Unrelated to Property Division** for supporting testimony.

[FN39]**Boyd County Tanning – Non-Marital, Income Non-Marital, Reliability of Documents**

This is erroneous. Damron provided documents of the income and expenses of the business in summarized spreadsheets and submitted to the Court as Respondent's Exhibits No. 4 and No. 5. These were created from expenses and income from the business. Most of the business records had been stolen by Mary Fowler in numerous burglaries, which were reported to authorities, and portions of these documents were made part of the testimony before the Court. Several records were submitted in Court by Fowler from these thefts, The business operated at a loss due to the high cost of utilities, as Damron was required to pay the utilities for the entire building, orchestrated by Fowler, and due to the thefts of products and merchandise by Fowler or her accomplices on several occasions. Any income derived from Boyd County Tanning was non-marital, as Mary Fowler's marital and dower interest had been purchased by Fred Damron on November 8, 1997. Any income derived from Carter County Tanning was also non-marital as it was purchased with non-marital funds, after separation, and 21 days prior to the divorce. See [FN43] **Burglaries, Thefts, Destruction of Property, Other – By Mary Fowler** and testimony below.

Page 33 *Fred Damron Deposition, Damron v. Damron, December 4, 1998*

Damron: Well, that gets into another issue with the George Kimbler who owns the other half of it (building on Midland Trail). We're now at a point where **I am paying utilities** and his is paying the payment.

Page 37 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Have you recently appeared at that business (Boyd County Tanning) and carried off some of the stock and trade?

Fowler: Right after my court date on October the 8th. Yes, I went out and got me a few candles, and I took 90-some dollars out of the drawer. And I'm going to subpoena and have her sworn, which she said I took $980.

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Justice: What else did you take out of there?

Fowler: That was it.

Justice: Did you take any candles?

Fowler: I just said that. Some candles and $90.

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Justice: Did you actually take the money out of the cash drawer or did somebody do that for you?

Fowler: No, I did that.

Justice: Did you tell anybody you were going to do it?

Fowler: No, I did not.

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Justice: There was somebody working there, wasn't there?

Fowler: Yes. And I told her to go back to the back and show the lady a bed.

Justice: And you took it while she was gone?

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Justice: Now, you've carried some stuff out of there since you all separated and the divorce, haven't you?

Fowler: I went in and I took $100 and what change was in the drawer and I took six to eight candles.

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Fowler: Yes.

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Damron: I see that's another stolen document that you have in your hand that was taken out of my vehicle during the burglary.

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Page 63 *Mary Fowler Testimony, Damron v. Damron, September 15, 1999*

Fowler: Yes, sir, I told her that at the last – I told you that at the last hearing. I took it out of his truck…

[FN40] Intentionally Left Blank

[FN41] Intentionally Left Blank

[FN42] Intentionally Left Blank

[FN43] **Burglaries, Thefts, Crimes, Destruction of Property by Mary Fowler**

First, the Appellant was removed from his home, site of most records, by fraudulent testimony from the Daughter of Appellee and Appellee. Appellant learned later that this was a form of legal positioning by the Appellee. Second, there were numerous thefts and burglaries of most of the remaining records, and the Appellee even submitted several of these records she had stolen in Court. Third, the Appellant reconstructed as much of the information as possible, but it was clear that the Appellee never intended to allow this original information to be submitted and then could claim to the Court that Appellant appeared uncooperative. The crimes by the Appellee against the Appellant WERE PROFITABLE. So profitable the Appellee was awarded nearly EVERY SINGLE ASSET and Appellant awarded the MARITAL DEBT. THEN AWARDS WERE OFFSET TO APPELLANT WITH PROPERTY AND ASSETS THAT NEITHER EVER OWNED.

DRC Ruth gave great weight to anything negative stated by opposing parties in her decision against Damron and ignored the crimes and background of Mary Fowler. See the following for supporting testimony.

Burglaries – Boyd County Tanning

Page 37 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

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Fowler: Right after my court date on October the 8th. Yes, I went out and got me a few candles, and I took 90-some dollars out of the drawer. And I'm going to subpoena and have her sworn, which she said I took $980.

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Page 48 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*
Justice: Now, you've carried some stuff out of there since you all separated and the divorce, haven't you?

Fowler: I went in and I took $100 and what change was in the drawer and I took six to eight candles.

Page 49
Justice: And there was a restraining order obtained on account of that, wasn't there?

Fowler: Yes.

Page 7 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*
Damron: No, there was a burglary also – several burglaries – at Boyd County Tanning that were reported.

Scott: When was that?

Damron: They were in late '97 and 1998 and then, when Mary had me – there were fraudulent statements made to have me removed from my home – all the documents that – primarily almost all the documents relating to my taxes in 1997 were removed.

Page 38

Damron: There were several different instances of burglaries and theft. There was an instance where she came in and robbed the cash drawer and took a bunch of inventory. That was over $1,000. There has been other cases – they have all been reported – where she has robbed the inventory back in the storeroom and emptied out all the inventory.

Page 39

Damron: There was another instance where she was involved that – with the person who did a breaking and entering on April of 1999

Justice: And the document with regard to the Carter County Tanning transaction, the original on that, was that also located in the truck that was…

Damron: That was not in the vehicle at the time. It was removed in one of the burglaries from the business.

Burglaries – Documents stolen by Mary Fowler

Page 24 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Damron: I see that's another stolen document that you have in your hand that was taken out of my vehicle during the burglary.

Damron: I just want to make sure it's accurate for the record, that it's identified and where it came from.

Page 7 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Damron: Because of my documents have been stolen in a burglary of my truck.

Scott: When was that burglary?

Damron: And there was another burglary at the business. There was a burglary on the day after my birthday that Mary was involved in the burglary.

Page 11

Damron: I see you have a good pile of stolen documents there in your folder.

Page 12

Justice: Wait a minute. Let me interpose here. If they were stolen, they were stolen.

Burglary – Fred Damron's Truck burglarized by Mary Fowler

Page 64 *Mary Fowler Testimony, Damron v. Damron, September 15, 1999*

Justice: And you had an opportunity to get in his pick-up truck, the pick-up truck he was driving, for you to obtain these documents.

Fowler: It was in – I don't recall – March.

Justice: March of what year?

Fowler: This year (March of 1999).

Page 34 *Mary Damron Testimony, Damron v. Damron, September 8, 1999*
Fowler: This is Fred to his Mother.

Justice: Okay, that's even better. That's the original of the deed from Fred to his Mother.

Justice: I'm going to ask the Court to examine this deed, especially the signatures and the stamp thereon.

Page 35
Ruth: It appears to be an original.

Justice: Where did you – how did you come by the original of a deed that was conveyed from Fred to his Mother? How did you come by that deed after you had filed the divorce?

Justice: The relevancy is, Your Honor, this document was stolen from my client's pickup truck while it was parked here in Catlettsburg as recently as six months ago.

Page 36
Justice: The relevance is that it's a stolen document. It has to do with her credibility.

Page 63 *Mary Fowler Testimony, Damron v. Damron, September 15, 1999*
Fowler: Yes, sir, I told her that at the last – I told you that at the last hearing. I took it out of his truck…

Page 80
Fowler: All the paperwork there has – yes – came from the truck,

Page 78 *Fred Damron Testimony, Damron v. Damron, September 8, 1999*

Damron: Oh, I was wondering where this went. This is another document that was stolen out of my vehicle in the burglary. In the vehicle burglary.

Page 79

Scott: Is the document what I just suggested it was?

Damron: Well, the document is a stolen document, yes, if that's what you mean.

Page 40 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: We have supplied the Court with a list of – the best that you can recollect – of things that were taken from the pick-up truck. Is that correct?

Damron: That is correct. That's the list of documents taken from the pick-up truck, along with the other physical items.

Justice: Have you seen any of those documents here in this courtroom today?

Damron: All over this table that's in front of Jeff Scott and Mary Fowler.

Page 75 *Mary Fowler Testimony, Damron v Damron, September 15, 1999*

Justice: I see Mr. Damron's 95 1040. How did you acquire that?

Fowler: I took – I took a stack of papers, Mr. Justice.

Page 76

Justice: His 1993, '94, '97 W-2s of Mr. Damron's

Fowler: Yes, sir.

Justice: And the original of those photocopies of that February 22nd letter, that was also taken at the same time by you. Is that right?

Fowler: If it's in that paperwork, yes.

Page 77

Justice: Let's see, did you also take a deposit ticket – photocopy of a deposit ticket – FM or FC or MG Damron, dated February 9, 1999?

Fowler: If it was in that stack of papers… …yes.

Justice: Do you have the originals as well as this copy?

Fowler: That's the stuff I got out of his truck right there.

Page 78

Justice: I guess that's an original of his driving record printout.

Fowler: That was in that stuff, yes.

Page 79

Justice: Were these copies taken from the truck or were these the originals that you made copies of?

Fowler: All those came from the truck.

Justice: Here's some GTE bills to Carter County Tanning dated August of – August of 1998. Were those something also you took from the truck?

Page 80

Fowler: All the paperwork there has – yes – came from the truck,

Justice: Here's the school record from Middlesburg Military Academy of Fred's son. Dated January 27, 1999.

Fowler: That was a copy that was in there too.

Justice: Is this something else that you took….

Fowler: That's all the receipts for the tanning bed business.

DUI, Totaled Jeep Grand Cherokee, Mary Fowler

Page 44 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Now, that's because you wrecked the '93 Jeep Grand Cherokee in July '97 while you were drunk?

Page 45

Justice: Were you charged with DUI and plead guilty?

Fowler: Yes, I did plead guilty because I was drinking wine. I'm not going to deny that.

Justice: And you wrecked it?

Fowler: Yes, accidentally.

Page 46

Justice: Alright. And then you sold it for $250 didn't you?

Fowler: It was totaled. I was so bizarre and upset at that time that I let the guy have it.

Justice: For $250?

Fowler: That's what he gave, yes.

Page 26 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Fowler: There was a Jeep – the one I totaled that night, and I think at the time it was totaled, we owed probably nine thousand.

Page 37

Justice: The Grand Cherokee, that was purchased March the 20th, 1995, for $27,069.50. Isn't that correct?

Page 38

Justice: You all borrowed the money to… …purchase it, and then you wrecked – you totaled the vehicle.

Fowler: I had an accident, yes.

Justice: While you were drunk.

Fowler: No, I did not. I had three glasses of wine and that's what they found in my system 'cause I had the wreck or they wouldn't have stopped me for no reason.

Justice: Ms. Damron, I'm sorry, Ms. Fowler, you pled guilty to DUI, your blood alcohol was twenty-one, and the blood test showed valium and other drugs in your system. Is that not correct?

Page 39

Fowler: That's – That's – I had one valium, three glasses of wine, and that was it.

Justice: Now – and you're asking that he be required to pay half that debt on this vehicle you totaled?

Page 36 *Fred Damron Testimony, Damron v. Damron, September 15, 1998*

Justice: The debt on the Jeep Cherokee, what are you asking the Court to do with regard to that?

Damron: The debt that's remaining, of course it's on my credit history. I did not wreck and total the vehicle. I didn't cause her to do what she did, and I feel that she should be made responsible for that indebtedness and see that it is paid off.

Page 23

Damron: I want to make sure that the $10,000 that's on the – owed on the Jeep is paid off. I don't feel that I should be made responsible for that 'cause, you know, I wasn't going to dinner and drugging and drinking with Jackie Ruth and then tearing up the vehicle.

MR-2 Rammed with S-10 4X4 by Mary Fowler

Page 40 *Mary Damron Testimony, Damron v. Damron, September 8, 1999*

Justice: And then another '86 MR-2 was purchased in '97 for $2,500, which is the one that you rammed your pickup truck into.

Page 37 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Damron: Mary took the S-10 four-wheel-drive, caved the side of it in and totaled that vehicle.

Shooting at Fred Damron by Mary Fowler

Page 14 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Damron: – one other reason was Mary had shot at me and I felt that it was important to, you know, get her – get Mother some security.

Scott: And did you come to the Boyd County Attorney or the grand jury of the Boyd District Judge and have a criminal complaint filed against Mary for shooting at you..

Damron: Yes I did.

Scott: …or get a domestic violence order?

Damron: Yes I did.

Restraining Orders obtained against Mary Fowler

Page 48 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice:Now, you've carried some stuff out of there since you all separated and the divorce, haven't you?

Fowler: I went in and I took $100 and what change was in the drawer and I took six to eight candles.

Page 49

Justice:And there was a **restraining order** obtained on account of that, wasn't there?

Fowler: Yes.

Page 73 *George Kimbler Testimony, Damron v. Damron, September 8, 1999*

Justice: June 11, 1987, you obtained – you filed a motion for a **restraining order** against her, did you not?

Page 74

Justice: In this motion for a **restraining order**, you say that – you are asking the Court to enter an order restraining the defendant, Mary Damron, for interfering with the business...

Page 75

Justice: So you did make this motion didn't you?

Kimbler: Yes, sir, I did.

Money Made at Boyd County Tanning

Page 43 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: So you really can't tell us how much money you made in that six-month period of time (at Boyd County Tanning), can you?

Fowler: No.

[FN44]DRC & Lower Court FAILED to act within their Discretion

Upholding the DRC report supports a position of believing a lying, adulterous, drug using woman with a significant criminal history, who gave several different stories and answers under sworn testimony, than Appellant. Appellee even admitted under oath the theft of Appellant's records. This is clear gender-bias and prejudice by the DRC. It further demonstrates the significance of the conflicts of interest noted on the DRC, Appellee's Attorney and Lower Court Judge and an unwarranted and unjustified bias and prejudice against Appellant. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.

[FN45]**Court Findings are CLEARLY ERRONEOUS**
It is a clear abuse of discretion by the Court uphold such a clearly erroneous position and report by the DRC. The findings by the DRC and the Lower Court are not supported by the record. THE COMPLETE RECORD. The current record presents a distorted view. A complete injustice has occurred by (1) Failing to have a meaningful hearing on the objections to the DRC report; (2) Failing to properly designate the record; (3) Failing to allow the record to be supplemented and the designation amended to reflect the TRUE Trial Court proceedings. THE DRC FINDINGS ARE CLEARLY ERRONEOUS and Appellant has demonstrated this by the Annotations of all documents by the Courts, which the Court of Appeals has NEVER reviewed. Simply reading the Annotated Findings of Fact by the DRC show how SIGNIFICANT AND CLEAR THE ERRORS ARE. Ignoring this information has resulted in a substantial, uncontroverted injustice to Appellant. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.

[FN46]**FAILURE to Judge Credibility of Appellee – Failure to Review TRUE RECORD RESULTS IN INJUSTICE**
There is nothing indicating that the Lower Court or the DRC "discerned the credibility of the witnesses". Had the Court done so, such an injustice would not have been allowed to occur. What is clearly apparent from the record is the Court became biased and prejudiced with the inclusion of false testimony that had nothing to do with the division of property. The report by the DRC clearly violated KRS

403.190. Even CR 52.01 was violated where an "appropriate judgment" was not rendered by the Court. The only true course that the Courts can take is to FULLY REMAND this case as the Appellant was denied any meaningful hearing on the objections to the DRC report. Appellant has been denied his due process rights from the onset of this case. The record has NEVER been reviewed. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.

[FN47]**DRC & Lower Court made SIGNIFICANT Error in Award of Attorney Fees to Attorney representing PRESIDING judge.**

Not only did the DRC and Lower Court err. IT WAS AN ABUSE OF DISCRETION. The Court of Appeals has taken an UNJUSTIFIABLE position. It was also a conflict of interest for the Judge to award fees to an attorney he was using privately at the same time. See the endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.

[FN48]**Clear Appeal could not be obtained from designated Record (SIX HOURS OF TESTIMONY MISSING)**

This is another clear example of prejudice and bias by the Court. Such bias and prejudice was developed by failing to have the complete record for review. It is apparent from such statements the Appellant could not make a clear appeal with a distorted record. See the endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.

[FN49]**Mary Fowler – Failure to secure ANY employment, just legal positioning**

Mary Fowler hoped that the Court would believe that she was unemployed. There was nothing before the Court to support that she could not work other than her wild claims, which cannot be believed. This was just more legal positioning to attempt to rob the Appellant of an "equitable distribution" of the marital assets. A review of Mary Fowler's conflicting testimony demonstrates the "lack of candor" she had before the Court. Since it was not reviewed, the bias was placed against Appellant. See the endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.

Page 33 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice:Are you employed at the present time?

Fowler: No.

Justice:Why aren't you employed?

Fowler: I've always owned my own business.

Page 46 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Have you ever attempted to obtain work since the divorce?

Fowler: No, I haven't

Page 47

Justice:Have you applied for social security disability benefits due to your inability to work?

Fowler: No, I have not.

Justice: Are you under the care of a physician at the present time?

Fowler: No, I'm not.

Justice: Are you taking any medication for the pain in your back?

Fowler: No.

Page 30
Justice: Have you been diagnosed for anything you require medication for?

Page 31
Fowler: No, sir

Page 45
Justice: Have you applied for public assistance?

Fowler: No.

[FN50] **Mary Fowler – No Access to Cash, The Record Shows this is FALSE**
By Appellee's own testimony IN THE RECORD, she received $31,730 IN CASH, in addition to loans from George Kimbler, Jackie Ruth (Relative of DRC) and her Twelve (12) brothers and sisters AND selling marital assets for unknown figures. THE RECORD also stipulated that the family home and vehicles were DEBT FREE. This leaves the Appellee with only expenses for utilities and food. The Court CANNOT seriously justify a position that Appellee did not have access to SIGNIFICANT CASH RESOURCES. This

does not include the cash resources not in the record or reported by Fowler, which are also significant. Mary Fowler also had access to cash resources she had stolen it from Appellant as documented in the burglaries and thefts made a part of the record. Appellee even gave testimony that she had been selling the marital assets, which was ignored by the Lower Court and DRC. Further, Appellee did not give the Court ANY reason to believe that she was not earning money in some capacity. See the endnotes at the end of this section for supporting testimony and exhibits. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.

Page 39 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Mr. Kimbler has **loaned** you some money recently?

Fowler: Yes.

Page 46 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Alright. And then you sold it (Jeep Grand Cherokee) for $250 didn't you?

Fowler: It was totaled. I was so bizarre and upset at that time that I let the guy have it.

Justice: For **$250**?

Fowler: That's what he gave, yes.

Page 44 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Fowler: I sold two trucks I got from HomeTech?

Justice: You got a distribution from HomeTech, and you sold those vehicles; is that right?

Fowler: Pardon me.

Justice: You got two vehicles from HomeTech and you sold those; is that right?

Fowler: Yes. **And some tools.**

Page 4 *Mary Fowler Testimony, Damron v. Damron, October 8, 199*

Fowler: I had a building with Mr. Kimbler – George Kimbler, which he (Fred Damron) bought from me for $25,000

Scott: Who bought it?

Page 5

Fowler: Fred. He gave me **$25,000**.

Scott: An when was it that he paid you $25,000 for your interest in the building?

Fowler: It was about three months later. (Petitioner's Exhibit No. 1 shows date of purchase to be November 8, 1997)

Page 37 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Have you recently appeared at that business (Boyd County Tanning) and carried off some of the stock and trade?

Fowler: Right after my court date on October the 8th. Yes, I went out and got me a few candles, and I took 90-some dollars out of the drawer. And I'm going to subpoena and have her sworn, which she said I took **$980**.

Page 40
Justice: How do you live?

Fowler: I've got two trucks from Home Tech, and I sold them and getting monthly payments from it.

Page 69 *Mary Fowler Testimony, Damron v. Damron, September 15, 1999*
Fowler: I received a dump truck I sold for **$500** 'cause it wasn't worth no more than that, and I got a GMC, which I sold to my brother, and he gave me **$5,000** for it,

Page 47 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*
Justice: Did you **put gas in that car**?

Fowler: No, I didn't. **My boyfriend did** last night.

Justice: Who is your boyfriend?

Fowler: Just a friend from out of town. **Jackie Ruth.**

[FN51]Attorney Fees Award – Unconscionable, Unsupported by the Record

Based upon the facts within the record; One, Appellee could have worked but chose not to because she has "always owned her own business"; Two, Appellee did have access to over $31,000 in CASH documented to the Court by her own testimony; **This is an unconscionable position and an**

abuse of discretion by the Court. The only "sound discretion" exercised by the Court was showing how the Conflict of Interest, and failure to report such, profited the Appellee. Such “sound discretion” is not supported by the record. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes. See also [FN49] **Mary Fowler – Failure to secure ANY employment, just legal positioning** and [FN50] **Mary Fowler – No Access to Cash, The Record Shows this is FALSE**

[FN52] **Railroad Retirement – Half awarded to Mary Fowler**
Based on the fact of Appellee is receiving over $200,000 in an award and the Appellant received less than nothing (-$10,000), a further award to the Appellee of the Appellant's retirement benefits, for a marriage of less than 7 years, is an abuse of discretion and totally unjustified. The Court of Appeals reversed this portion of the DRC order and took the position only Tier II benefits of Railroad Retirement can be awarded. Appellant takes the position it is not subject to distribution and in light of the fact Fowler received over $200,000 as a marital award and Damron received NEGATIVE -$10,000 (Less than nothing), this was a clear abuse of discretion. Any further award to the Appellee continues to abuse the Appellant EXTENSIVELY. See also the Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.

[FN53] **THIS CASE MUST BE FULLY REMANDED**
This case must be FULLY REMANDED, the orders vacated, and the Appellant is entitled to a meaningful hearing on the objections to the DRC report by an unbiased Court without a conflict of interest. See the endnotes at the end of this section for supporting testimony and exhibits. See also the

Annotated Findings of Fact, Report and Recommendations by DRC, Annotated Exceptions Order and Annotated DRC Notes.

[FN54] **Conflicting Testimony, Credibility**
During all testimony taken from Mary Fowler her testimony differed in most all instances as she could not keep her stories straight. This clearly demonstrates that Mary Fowler lacks any credibility as a witness and is not telling the truth to the Court. During the depositions and hearings Mary Fowler was asked the same questions, about the same subjects, and gave completely different answers. The following demonstrates her changes in testimony and makes ALL of her testimony far from believable. Mary Fowler attempted to have the Court believe all remodeling/improvements/repairs to the family home, for 7 years, was completed by HomeTech in most instances, which was not the case. Even if this was true, which it wasn't, it would be considered marital.

DRC Ruth failed to recognize that Mary Fowler's testimony differed during each time she gave testimony to the Court. This lends great weight that her testimony was not the truth at all. In three instances Fowler was questioned regarding the improvements/remodeling performed on the Bowling Drive home. A review of this testimony clearly shows the testimony given to the Court changes at each instance testimony is given. All testimony by Fowler is suspect.

Bowling Drive, Improvements to Home
Page 34 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: And after you were married, there were improvements made to that property wasn't there?

Fowler: No sir, never.

Justice: You didn't spend a cent?

Fowler: No, sir.

Justice: You didn't do anything to that property after you all were married?

Page 35
Fowler: No, sir.

Page 43 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*
Justice: Were there any improvements made to your home during the time you all were married?

Fowler: No, there's not been any improvements on that home.

Page 6 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*
Justice: Were there any improvements made to the real estate from the time you married Mr. Damron until you all were divorced?

Fowler: Yes.

Page 6
Justice: My question to you is what was done. I'm not asking who did it.

Scott: (To Fowler) No, damn it, anybody. Any entity that did anything at that house from June 14th.

Fowler: That was it.

Justice: Do what, now?

Fowler: That was it. A septic tank, some lights. Maybe if the electrical didn't work, somebody went out there and worked on it thirty minutes, and then polished them.

Bowling Drive, Roof

Page 35 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: What about the roof?

Fowler: That was done by HomeTech.

Justice: That wasn't done after the date of your marriage?

Fowler: Yes, HomeTech. He helped with the labor.

Page 43

Justice: HomeTech did the roof?

Fowler: Yes, sir.

Page 46 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Did you repair the roof?

Fowler: I put that roof on – HomeTech did for me – six months after I married him.

Page 18 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Was the roof replaced?

Fowler: Yes. By me and HomeTech.

Justice: Did you pay - - you say HomeTech did it?

Fowler: Yes. My money from HomeTech did it.

Justice: Well, let's back up. Did HomeTech do the work?

Fowler: No, sir. They didn't do the physical work.

Page 19
Justice: Who did the work?

Fowler: Well, two guys from HomeTech did and was paid from HomeTech and him. And he got a couple of his friends just to do labor work, just like he did the labor work.

Justice: So, a couple of the employees from HomeTech, some other people, and Fred replaced the roof; is that correct?

Fowler: Uh-huh.

Bowling Drive, Gutters & Downspouts
Page 43 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*
Justice: HomeTech did the gutters and downspouts?

Fowler: Yes, sir.

Page 46 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*
Justice: Gutters and downspouts?

Fowler: I did that from my company, yes.

Justice: Your company did that?

Fowler: Yes.

Page 20 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Did you install gutters and downspouts when you did that (replaced roof)?

Fowler: Yes, I did from HomeTech.

Bowling Drive, Painting of Home

Page 35 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Painted the outside of the home?

Fowler: No sir, he did not.

Page 43

Justice: HomeTech painted outside of the home

Fowler: Yes, sir.

Page 20 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: The outside of the home was painted, wasn't it?

Fowler: Yes, sir.

Justice: And how was that paid for?

Fowler: Through our checking account.

Justice: So, you and Mr. Damron paid for the painting?

Fowler: Yes.

Bowling Drive, Outside Light Fixtures

Page 36 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Light fixtures?

Fowler: No, sir.

Justice: There were no light fixtures installed after you were married to the outside?

Fowler: No, sir. The only thing the man did was in my living room, there is a chandelier and he went and got – I broke two cups accidentally a long time ago – my grandbaby did, and he replaced two cups on it.

Page 43

Justice: HomeTech installed the outside light fixtures?

Fowler: Yes, sir.

Page 20 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Okay. Did you replace the outside light fixtures?

Page 21

Fowler: Yes, sir.

Justice: How was that paid for?

Fowler: Through the money we both had in the checking account.

Bowling Drive, Septic System

Page 36 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: The septic system?

Fowler: We were married. Yes, he did have it emptied out for a hundred dollars.

Justice: What about the repairs to it?

Fowler: There wasn't no repairs.

Justice: Nothing was replaced there?

Fowler: No, just a brown top that cost twenty dollars.

Page 44

Justice: HomeTech repaired the septic system?

Fowler: No, that probably came out of our checking account.

Page 21 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Okay. And you said that - - you already testified that you installed a new aerator and controller for your septic system; is that right?

Fowler: Yes.

Justice: And that was paid for how?

Fowler: By me and him out of our personal checking account.

Justice: Okay. That whole thing was paid for by both of you, the septic - -

Fowler: Yes.

Justice:- - discharging pumping the tank.

Bowling Drive, Kitchen

Page 36 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Nothing bought for the kitchen?

Fowler: No, sir.

Bowling Drive, Appliances

Page 36 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: No appliances?

Fowler: No, sir. I bought a dishwasher out of our money in our checking account.

Page 44 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Did you all purchase any kitchen appliances?

Fowler: Bought a – about four years or five years ago, bought a Maytag dishwasher. That's it.

Justice: No silverware, pots and pans, no electric appliances?

Fowler: For a Christmas gift, he might have bought me something like that.

Page 12 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Any appliances purchased during the marriage?

Fowler: No, sir.

Justice: No VCR?

Fowler: No, sir.

Justice: No dishwasher?

Fowler: Yes. There was a dishwasher we both bought. Went and picked it out.

Justice: Did you purchase any kitchen appliances?

Fowler: No, sir.

Justice: No deep fryer?

Fowler: That was my Christmas present he bought me.

Justice: Okay. Steam cooker?

Page 13
Fowler: That was one of my Christmas presents.

Bowling Drive, Ceiling Fans/Light Fixtures
Page 12 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*
Justice: Were there any ceiling fans or lights purchased?

Fowler: Yes, that I bought.

Bowling Drive, Exercise Room - Carpet
Page 36 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*
Justice: No carpet in the exercise room?

Fowler: No, sir, that was done by HomeTech and they got the receipt.

Justice: Who paid for it?

Page 37

Fowler: HomeTech out of my money and he's got the checks – Mr. Kimbler does.

Justice: HomeTech paid for those?

Fowler: Yes.

Page 44 _*Mary Fowler Testimony, Damron v. Damron, September 8, 1999*_

Justice: Did you carpet that exercise room?

Fowler: That – yes. No, no, no, no, no. That came from HomeTech.

Bowling Drive, Cedar Shakes

Page 38 _*Mary Fowler Testimony, Damron v. Damron, October 8, 1998*_

Justice: What about the cedar shakes?

Fowler: This is no cedar shakes on that house.

Justice: There were no cedar shakes…

Fowler: No. Go look at it. It is setting there with none on it.

Page 22 _*Mary Fowler Deposition, Damron v. Damron, December 4, 1998*_

Justice: The cedar shakes were replaced on the front of the home; is that right?

Fowler: Yes, sir.

Justice: How was that paid for?

Fowler: Three or $400 worth. That was paid for by me and him both.

Bowling Drive, Basement Sealed

Page 38 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: And sealed the basement?

Fowler: No

Page 43

Justice: HomeTech sealed the basement?

Fowler: I don't recall if it was out of our checking account or HomeTech. I believe it was out of our checking account.

Page 21 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Was the basement sealed?

Fowler: No, sir, it was not.

Bowling Drive, Termite Treatment

Page 38 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Termite treatment?

Fowler: No, I did that myself.

Justice: You did that yourself?

Fowler: Yes, I had Mr. McKenzie do it, yes. I paid for it with HomeTech's money.

Page 43
Justice: HomeTech did the termite treatment?

Fowler: No, that was taken out of our checking account.

Page 43 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*
Justice: No repairs?

Fowler: The only thing that happened was termites got in and ate out the front of my house, and we did some work on that.

Page 22 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*
Justice: Were there any termite treatments?

Fowler: Yes, sir. One.

Justice: How was that paid for?

Fowler: By both of us out of our personal checking account.

Bowling Drive, Termite Repair
Page 6 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*
Justice: Were there any improvements made to the real estate from the time you married Mr. Damron until you divorced?

Fowler: Yes.

Justice: What were those improvements?

Fowler: Okay. Just the front of my house got ate out by termites, and my company HomeTech fixed it.

Bowling Drive, Air Conditioner Compressor

Page 40 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Let me go though what was done. Was an air conditioner compressor installed while you all were married?

Fowler: Yes, sir.

Page 43 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Didn't put a new air conditioner compressor in?

Fowler: No.

Page 9 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Was your air conditioning compressor replaced?

Fowler: Yes, it was.

Bowling Drive, Air Conditioner Fan Motor

Page 40 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Okay. Air conditioner fan motor, was that installed while you were married?

Fowler: Yes, sir, with both of our moneys.

Page 10 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Air conditioner fan motor, that was done right?

Fowler: Yes, sir.

Bowling Drive, Septic Aerator Motor/Controller

Page 40 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Was a septic aerator motor controller installed after the marriage on your home?

Fowler: No, sir, it was just sucked out.

Page 41

Justice: And the septic aerator motor was that installed while you were married?

Fowler: No, all I know is that it was sucked out and that was it.

Bowling Drive, Outside Light Fixtures

Page 40 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Outside light fixtures were installed while you all were married?

Fowler: No, sir.

Bowling Drive, Exercise Room – Mirrored Door

Page 40 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: A mirrored door, was that installed in the exercise room while you were married?

Fowler: No, sir.

Justice: It wasn't?

Fowler: It was but I put it there.

Justice: Was it installed?

Fowler: Yes, sir, but I paid for this out of the construction company that I worked for.

Page 41
Justice: All I asked you was a mirrored door installed in your exercise room while you were married, and then you said not and then you said yes.

Fowler: Yes, but I thought you meant by him.

Justice: No, I just asked you if it was installed while you were married?

Fowler: Rodney, yes, it was. Yes.

Treadmill
Page 41 _Mary Fowler Testimony, Damron v. Damron, October 8, 1998_
Justice: Did you all buy the treadmill while you all were married?

Fowler: I bought that as a Christmas present for him.

Justice: Okay. And you've got that now, right?

Page 42
Fowler: Yes, I do.

Justice: Okay. Exercise machine?

Fowler: A treadmill that I bought for him for Christmas.

Page 44 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Did you all outfit an exercise room with a treadmill and an exercise machine?

Fowler: That's stuff I had before I married him. I bought the treadmill for a Christmas present.

Justice: You bought the treadmill for a Christmas present for who?

Fowler: I just bought it as a Christmas present for me and him both.

Bowling Drive, Spare Bedroom – Mirrored Door

Page 42 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Spare bedroom – mirrored door installed?

Fowler: No, sir.

Bowling Drive, Spare Bedroom – Light Fixtures

Page 42 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Light fixtures?

Fowler: No, sir.

Page 12 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Were there any ceiling fans or lights purchased?

Fowler: Yes, that I bought.

Bowling Drive, Spare Bedroom – Air Vents

Page 42 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Air vents?

Fowler: No, sir

Bowling Drive, Master Bedroom

Page 42 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Master bedroom – waterbed mattress, waterbed cover and sheets and siderails?

Fowler: No, sir.

Justice: None of that was done while you all were married?

Fowler: No.

Page 45 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Waterbed?

Fowler: No, I had my waterbed for fifteen years.

Bowling Drive, Basement - Furniture

Page 42 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Furniture in the basement?

Fowler: That furniture was provided by HomeTech. It was cash that was supposed to be given to me.

Justice: That was provided by HomeTech during your marriage?

Fowler: Yes, sir.

Page 45 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: You furnished the basement family room, did you not?

Fowler: That was - well I told you – from HomeTech – three years ago or four years ago.

Page 18

Fowler: I bought a $2,000 living room suite, which came out of HomeTech.

Page 10 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Was there any furniture purchased during the marriage for the home?

Page 11

Fowler: By me and HomeTech. My money from HomeTech. I did it. I purchased the furniture.

Justice: Okay. Is it your testimony it's money you earned - -

Fowler: From HomeTech.

Justice: - - from HomeTech purchased during the marriage; is that correct?

Fowler: For the furniture

Justice: Do I understand your testimony?

Fowler: Yes, sir. For that furniture.

Justice: All right. What furniture was purchased during the marriage that's in the home?

Fowler: Just a couch and a chair; two end tables. That was it.

Justice: Couch, chair, end table. Any lamps?

Fowler: Two lamps. That was it.

Justice: Love seat?

Fowler: That came with the couch, yes.

Justice: Okay. You just said a couch. You didn't say a couch and a love seat.

Fowler: Well, it's a living room set. Couch, chair, and another chair.

Bowling Drive, Basement - Carpet
Page 43 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*
Justice: Carpet in that room?

Fowler: Yes, sir.

Justice: That was all provided by HomeTech?

Fowler: Yes, sir

Page 13 *Mary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Was any of the house recarpeted or any flooring placed in the house?

Fowler: The one room downstairs where I bought the carpet.

Bowling Drive, Basement Bathroom - Fixtures

Page 43 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Fixtures in the basement bathroom?

Fowler: No fixtures.

Bowling Drive, Hallway - Fixtures

Page 43 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Fixtures in the hallway?

Fowler: No. I just bought all these fixtures.

Page 12 M*ary Fowler Deposition, Damron v. Damron, December 4, 1998*

Justice: Hallway light fixtures?

Fowler: Not bought. They were already there. We just had them rewired and fixed.

Justice: You didn't put any new ones up?

Fowler: I put them up here myself after the divorce.

Bowling Drive, Phone System Controller

Page 43 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Phone system controller?

Fowler: That is what I had from All Season. He had it hooked up for me.

Bowling Drive, Living Room

Page 44 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: Did HomeTech replace the windowsills?

Fowler: In my living room?

Justice: Yes

Fowler: Yes, sir.

Bowling Drive, Windows

Page 44 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: HomeTech replaced the windows in your home?

Fowler: Yes, sir.

Page 45 *Mary Fowler Testimony, Damron v. Damron, September 8, 1999*

Justice: Replace the windows in the living room and the support columns?

Fowler: That's what I did from HomeTech, yes.

Justice: HomeTech did that?

Fowler: Just some windows at the bottom, maybe $300 worth of windows, yes.

Justice: How'd HomeTech do that?

Fowler: I own a construction company. I was the owner. If I needed something, I got it for my home.

Justice: How big a window was that?

Fowler: There's probably about six – see, three or four – four windows I had to replace, and they was probably about two to three hundred apiece.

Page 46

Justice: Those windows are four by six?

Fowler: I'm not exactly how big they are.

Justice: Big windows.

Fowler: Yeah, I said two or $300. I don't know how big. I don't know the exact measurements. They're taller than what I am.

Bowling Drive, Steam Cleaning

Page 44 *Mary Fowler Testimony, Damron v. Damron, October 8, 1998*

Justice: HomeTech steam cleaned the house?

Fowler: Nobody steam cleaned the house.

Justice: There wasn't any steam cleaning done on the outside?

Fowler: I did it myself with my own money and my brothers.

[FN55] **Boyd County Tanning – Non-Marital**

This equipment was purchased during the marriage in 1997, and the marital and dower interest in this equipment was purchased from Mary Fowler by Fred Damron on November 8, 1997. These items were not subject to distribution by the DRC. See [FN11] **Midland Trail & Boyd County Tanning Purchase by Fred Damron** and [FN12] **Midland Trail – Conveyance from Fred Damron to Hazel Damron** for additional supporting testimony.

Page 29 *__Fred Damron Testimony, Damron v. Damron, September 15, 1999__*

Justice: The conveyance that the former Ms. Damron made to you of the Boyd County Tanning property and business, what were the facts and circumstances surrounding that transfer?

Damron: Surrounding the purchase?

Justice: Yes.

Damron: Mary had wanted to, basically, get out of the business, and the – she was also going through a dissolution of – with George and HomeTech – and I agreed to pay her $50,000 for the building and the business.

Justice: And who came up with that figure?

Damron: We did mutually.

Justice: Did – as far as you know, did she have legal representation with regard to that transfer?

Damron: Yes, she did.

Justice: And who was her attorney at the time?

Damron: Robert Templeton.

Page 31

Justice: Did you have discussions with her at the time the transaction took place?

Damron: Yes, she was actually – we were together at the business in your presence when the transaction actually occurred.

Justice: Did you have any discussions that she was transferring any claim she would have against that property in the event the divorce went through?

Damron: Yes, she was transferring her dower interest and all of her interest in the business and the building.

[FN56] **Non-Marital Property – Failure to Identify**
The DRC failed to include all the non-marital property, which Damron indicated by exhibit and testimony. This included Boyd County Tanning, the building at Midland Trail, a $10,000 non-marital vehicle used to purchase the Jeep Cherokee, and a $2,500 non-marital vehicle used to purchase the Corvette. See [FN11] **Midland Trail & Boyd County Tanning Purchase by Fred Damron,** [FN17] **Vehicles owned by Parties,** [FN18] **Jeep Grand Cherokee – Totaled by Mary Fowler while drunk,** [FN55] **Boyd County Tanning – Non-Marital** for supporting testimony and the testimony below.

Page 33 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: We've entered into evidence a list of contributions that you or you and Mary jointly put into her home on Bowling Drive. Is that correct?

Damron: That is correct.

Justice: And that's a little over $30,000. Is that right?

Damron: I believe that's correct.

Justice: What are you asking the Court to do with regard to that?

Damron: The only thing I'm asking for is just an equal division. I don't want her half. I just want mine. Just an equal division of, you know, whatever we have placed in there and spent.

[FN57] **Remodeling/Improvements and Repairs – Bowling Drive [FN38]**

This was clearly erroneous to fail to report the more than $38,000 spent from 1991 to 1998 on the home at Bowling Drive the DRC was awarding to Fowler. Numerous Remodeling/Improvements and Repairs were made to this property and it is patently unjust to award the entire value to Fowler. See supporting testimony below.

Page 33 *Fred Damron Testimony, Damron v. Damron, September 15, 1999*

Justice: We've entered into evidence a list of contributions that you or you and Mary jointly put into her home on Bowling Drive. Is that correct?

Damron: That is correct.

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APPENDIX E

COMMONWEALTH OF KENTUCKY

COURT OF APPEALS

ORDER

ORDER DENYING PETITION FOR REHEARING JANUARY 25, 2002

For Writ of Certiorari to the United States Supreme Court

Appeal from Boyd Circuit Court
Hon. C. David Hagerman, Judge
Action No. 98-CI-00326
Court of Appeals No. 2000-CA-002406-MR
Kentucky Supreme Court No. 2002-SC-157-D

ORDER DENYING PETITION FOR REHEARING

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 2000-CA-002406-MR

FREDERICK CECIL DAMRON APPELLANT,

v. APPEAL FROM BOYD CIRCUIT COURT
ACTION NO. 98-CI-326

MARY DAMRON FOWLER APPELLEE.

ORDER DENYING APPELLANT'S PETITION FOR REHEARING

** ** ** **

BEFORE: EMBERTON, MILLER and SCHRODER, JUDGES.

The Court having considered appellant's Petition for Rehearing and being sufficiently advised, it is ORDERED that the same is hereby DENIED.

ENTERED: JAN 25, 2002

/s/ Miller
JUDGE, COURT OF APPEALS

APPENDIX F

COMMONWEALTH OF KENTUCKY

COURT OF APPEALS

ORDER

ORDER DENYING MOTION TO SUPPLEMENT THE RECORD AND AMEND THE DESIGNATION OF THE RECORD

FEBRUARY 20, 2002

For Writ of Certiorari to the United States Supreme Court

Appeal from Boyd Circuit Court
Hon. C. David Hagerman, Judge
Action No. 98-CI-00326
Court of Appeals No. 2000-CA-002406-MR
Kentucky Supreme Court No. 2002-SC-157-D

ORDER DENYING MOTION TO SUPPLEMENT AND AMEND THE DESIGNATION OF THE RECORD AND PETITION FOR REHEARING DUE TO DEFICIENT RECORD

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 2000-CA-002406-MR

FREDERICK CECIL DAMRON APPELLANT,

v. APPEAL FROM BOYD CIRCUIT COURT
ACTION NO. 98-CI-326

MARY DAMRON FOWLER APPELLEE.

ORDER

BEFORE: EMBERTON, MILLER and SCHRODER, Judges.

Appellant, pro se, has moved this Court to Supplement the record and for additional time to file a motion to reconsider. No responses have been filed.

Having considered the motions, the Court ORDERS the motions be, and they are hereby DENIED. Pursuant to CR 76.38(3), the denial of a Petition for Rehearing cannot be reconsidered. The Clerk of this Court is DIRECTED to RETURN appellant's tendered motion for reconsideration this date.

ENTERED: FEB 20, 2002

/s/ Wil Schroder
JUDGE, COURT OF APPEALS

APPENDIX G

COMMONWEALTH OF KENTUCKY

COURT OF APPEALS

ORDER

ORDER DENYING MOTION RECONSIDER MOTION TO SUPPLEMENT THE RECORD AND AMEND THE DESIGNATION OF THE RECORD
APRIL 9, 2002

For Writ of Certiorari to the United States Supreme Court

Appeal from Boyd Circuit Court
Hon. C. David Hagerman, Judge
Action No. 98-CI-00326
Court of Appeals No. 2000-CA-002406-MR
Kentucky Supreme Court No. 2002-SC-157-D

ORDER DENYING MOTION TO RECONSIDER ORDER DENYING MOTION TO SUPPLEMENT THE RECORD AND AMEND THE DESIGNATION OF THE RECORD BECAUSE DEFICIENT

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 2000-CA-002406-MR

FREDERICK CECIL DAMRON APPELLANT,

v. APPEAL FROM BOYD CIRCUIT COURT
ACTION NO. 98-CI-326

MARY DAMRON FOWLER APPELLEE.

* * * * * *

ORDER

BEFORE: EMBERTON, MILLER and SCHRODER, Judges.

Appellant, pro se, has moved this Court to reconsider the February 20, 2002 order denying his motion to supplement the record. No responses have been filed.

Having considered the motions, the Court ORDERS the motions be, and they are hereby DENIED. A motion for discretionary review has been filed in the Supreme Court. Therefore, this Court has lost jurisdiction to act.

ENTERED: APR 09, 2002

/s/ Wil Schroder
JUDGE, COURT OF APPEALS